

4 March 2015

Senate Economics Legislation Committee
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Parliament House
CANBERRA ACT 2600

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Dear Senators,

Corporations and Markets Advisory Committee

The Australian Institute of Company Directors (AICD) welcomes the opportunity to make this submission with respect to inquiry into the Australian Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014 (the Draft Bill).

The AICD is the nation's leading organisation for directors, dedicated to making a positive impact on society and the economy by promoting professional director education and excellence in corporate governance. We have a significant and diverse membership of more than 35,000 from across a wide range of industries, commerce, government, the professions, private and not-for-profit sectors.

Summary

As noted in our previous submission to Treasury¹, the AICD strongly opposes the abolition of the Corporations and Markets Advisory Committee (CAMAC) and we recommend that the proposed abolition not proceed. We also wrote directly to the Acting Assistant Treasurer in June 2014 to express our concern regarding this proposal.

The AICD has firmly supported the Government's deregulatory agenda to date. We have long advocated for a reduction in red tape to create a system of efficient regulation, which is a key element for boosting national productivity. Despite this, we are disappointed that the Government has decided to discontinue CAMAC.

The need to retain CAMAC

In the short term, the abolition of CAMAC and the streamlining of its functions into Treasury may appear to be an effective cost-saving measure. However, while we commend the Government for seeking budget savings in general, we are of the view that, over the longer term, dismantling CAMAC will prove more costly and be contrary to the Government's own objectives as set out in the *Smaller and More Rational Government* reforms.² Those reforms seek to remove inefficient and complex structures, seek a leaner and more business-like way for the Government to operate and prevent the proliferation of wasteful structures. CAMAC epitomizes the high-quality, effective and cost-conscious approach the Government is trying to achieve.

¹ AICD submission to Treasury dated 24 October 2014. A copy of this submission is available on our website: www.companydirectors.com.au

² *Smaller and More Rational Government 2014-2015*, Senator the Honourable Mathias Cormann, Minister for Finance May 2014.

The Government is also seeking to reduce the current levels of red tape. We are of the view that the Government's decision to dismantle CAMAC will, in fact, increase the level of red tape in the long term. This is because there will no longer be a cost-effective, highly experienced and independent body considering improvements to the corporate law in Australia.

In our view, the hallmark of any solid deregulatory agenda is not just removing regulation, but ensuring that the regulation which remains is working as effectively as possible. One of our concerns with previous Commonwealth and State governments was the practice of moving straight to regulation, without first identifying and adequately defining the problem to be solved. Only after first determining whether a problem actually exists and then appropriately defining that problem can analysis be undertaken as to whether new regulation, the removal or amendment of existing regulation or another option (such as education or guidance) will provide a more appropriate and targeted solution. We have consistently argued that, to achieve effective regulatory outcomes, it is critical for government to:

- a. identify and carefully define the issue that the government is seeking to address and limit any regulatory response to the issue as defined; and
- b. base policy decisions on a fully-informed and accurate understanding of the factual, legal and/or governance background to the particular issue.

Regardless of one's views as to the recommendations proposed by CAMAC on particular issues, it must be recognised that it has played a critical role in identifying, explaining and analysing corporate law and market-related problems. CAMAC has also played an important educational role by preparing high-quality and well-researched reports which effectively set out technical issues in a clear and highly readable manner.

The level of consultation conducted by CAMAC with stakeholders is also noteworthy. CAMAC's expertise in the corporations and markets areas ensured a deep understanding within CAMAC of the issues and laws being raised by stakeholders during consultations. This allowed CAMAC to engage in effective communication and sophisticated debate with stakeholders on the matters it was considering. We do not believe, at present, that similar expertise could be provided by other government bodies or departments providing advice to the Government.

Corporations are key drivers of Australia's growth and prosperity. On this basis, Australia's corporate and market regulatory settings should be considered a priority to ensure our framework operates as effectively as possible. The abolition of CAMAC will significantly undermine Australia's ability to review how our regulatory regime advantages or disadvantages the operation of corporations and markets today and into the future.

The abolition of CAMAC will also have negative implications for the States and Territories as their governments strive to support small business, encourage entrepreneurialism and create jobs. Effective and workable corporations legislation at the Commonwealth level is critical to underpinning these objectives. As the States have currently referred their corporations power to the Commonwealth, the abolition of CAMAC will further lessen the ability of States to participate in and influence corporate law matters.

Conclusion

Given the valuable role it has played in the corporations and markets arena over the past 25 years, we strongly recommend that the Government re-consider its decision to abolish CAMAC.

From the time the proposed abolition was first announced, we have clearly expressed our concerns and our willingness to discuss the options available to the Government to re-instate CAMAC or to deploy CAMAC's assets and expertise to another independent body.

We hope that our comments will be of assistance to the Committee. If you would like to discuss any aspect of our views, please contact us on (02) 8248 6600.

Yours faithfully,

ROB ELLIOTT

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