

2 March 2015

Senate Economics Legislation Committee
Parliament House
Canberra ACT 2600

Via email: economics.sen@aph.gov.au

Dear Committee members

Submission: Inquiry into the Australian Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014

I am making this submission in my capacity as a former Deputy Director of the Corporations and Markets Advisory Committee (CAMAC). I held that position until 8 September 2014, when I was made redundant as part of the implementation of the Government's decision to abolish CAMAC.

On 24 October 2014, I made a submission to the Corporations and Schemes Unit of the Financial System and Services Division of the Treasury in response to the Exposure Draft of the *Australian Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014* (the CAMAC Abolition Bill). That submission was substantially similar to this submission.

The intended abolition of CAMAC is misconceived. Given my close involvement with CAMAC, the sole purpose of this submission is to correct some misconceptions and faulty reasoning that have led to the decision to abolish CAMAC. I leave it to others to supply the many cogent reasons in favour of CAMAC'S retention.

The policy framework that led to the proposal to abolish CAMAC is set out in the Ministerial Paper issued by the Minister for Finance in May 2014, *Smaller and More Rational Government 2014–15* (the Ministerial Paper). This submission focuses on two key elements of the Ministerial Paper, the need to increase efficiency and eliminate duplication and the criteria for assessing the need for a government body.

Efficiency and the elimination of duplication

The Minister's Foreword to the Ministerial Paper refers to the Commonwealth having 'too many inefficient and complex structures' and refers to 'bodies that are adding marginal value or are duplicating each other or other levels of government'.¹

¹ p iii of the Ministerial Paper.

The Foreword also refers to ensuring ‘that overly–bureaucratic structures are simplified’.²

CAMAC performed its functions with a very high degree of efficiency. Its annual budget was less than \$1 million. Even on such a small budget, CAMAC regularly returned an often substantial surplus to the Commonwealth.

CAMAC, with its simple membership structure and three–person Executive, was the antithesis of bureaucracy. With such a small number of personnel and limited budget, CAMAC increased its productivity year by year while complying with all its obligations under the *Financial Management and Accountability Act 1997*.

Given the size of CAMAC’s budget, the savings to the Commonwealth from its abolition would at best be minimal. In fact, however, if the comprehensiveness and high quality of the work carried out by CAMAC are to be preserved by the Department of the Treasury, a much higher level of expenditure will almost certainly be required. Under the CAMAC structure, many company directors, lawyers, accountants and other professionals contributed their time and practical market expertise and experience as members of CAMAC for only a nominal cost (with many waiving any fee at all) to develop recommendations that have been widely recognised as soundly based and well–reasoned. Similarly, individual professionals and professional organizations were prepared to spend countless hours to contribute to CAMAC’s consultation process, in the knowledge that the fruits of their labour would be carefully considered by their peers and by dedicated and professional expert officers.

The transfer of CAMAC’s work to the Treasury loses the current layer of professional input from members and in fact duplicates the Treasury’s policy development function.

Any ‘inefficient overheads’³ have been statistically insignificant in the case of CAMAC. The Ministerial Paper states that a ‘Chief Executive Officer, a Chief Financial Officer and associated support staff can easily cost half a million dollars per year, before adding scalable costs like separate IT systems, human resource costs and public relations’.⁴ As mentioned above, CAMAC had only three full–time staff to perform all its policy and administrative functions and the salaries of the full–time staff were less than half a million dollars out of a total budget of less than one million dollars. CAMAC was ably assisted in performing its administrative functions at peak efficiency and minimal cost by the willing and capable support of the Australian Securities and Investments Commission (ASIC) in relation to finance, payroll, IT, human resources, library and other administrative matters.

Given all these factors, the goal mentioned in the Treasurer’s budget speech on 13 May 2014, ‘to deliver better value for taxpayers’, would be better served by CAMAC’s restoration than by its abolition.

² *ibid.*

³ p 15 of the Ministerial Paper.

⁴ *ibid.*

Criteria for assessing the need for a government body

The Ministerial Paper sets out four criteria to be applied in assessing the need for government bodies.⁵ All four criteria support the retention of CAMAC, as explained below.

Criterion 1: whether a current or proposed body performs a public function properly belonging to the Commonwealth.

The corporations legislation on which CAMAC advises the Government (in particular, the Corporations Act) is enacted pursuant to the corporations power in paragraph 51(xx) of the Commonwealth Constitution and the Territories power in s 122 of the Constitution, together with powers referred to the Commonwealth by the States pursuant to paragraph 51(xxxvii) of the Constitution. CAMAC therefore performs a public function properly belonging to the Commonwealth.

Criterion 2: whether a government body is necessary to provide the function.

The development of an appropriate regulatory framework for corporations and financial markets is a matter for government to decide. The body that develops and advises on this type of policy should be established by government for that purpose. Bodies established by professional organizations and other private interest groups, no matter how well-intentioned or thorough in their analysis of relevant issues, cannot provide the type of independent advice required.

A related matter is whether the regulatory policy function performed by CAMAC requires a permanent body. The Ministerial Paper says:

Too often government bodies are established on a permanent basis, when the policy problems they seek to address can be solved or moderated over the short to medium term.⁶

The corporations legislation applies to an economy that is changing constantly and at an increasingly rapid rate. This legislation, of its nature, requires ongoing policy review. The need to ensure that this legislation keeps pace with economic developments will always need to take a very high priority if Australia's economy is to remain internationally competitive. It is not just a short to medium term matter. The Howard–Costello Government recognised this when it moved CAMAC (and other related bodies such as ASIC) under the Treasury portfolio when it came to power in 1996. That Government always had the highest regard for CAMAC's advice. This placing of CAMAC within the Treasury portfolio was continued when the ALP formed Government in 2007.

⁵ at p 12.

⁶ *ibid.*

Criterion 3: whether functions can be grouped more efficiently into a small number of government bodies.

CAMAC is the most efficient type of body for the quality and type of advice given on the corporations legislation, for the reasons given above. The same type and quality of practical expertise and advice cannot be given by the Treasury.

Criterion 4: whether government bodies have the appropriate type of legal structure to achieve their purpose in the most efficient and effective manner.

The legal structure of CAMAC provided it with sufficient expertise and independence to ensure that the advice given to government exhibited, and was perceived to exhibit, an intimate knowledge of the bodies and markets affected by the area under review, as well as a high degree of thoroughness and depth of thought and analysis in developing policy recommendations. As outlined in this submission, CAMAC constantly achieved its purpose in the most efficient and effective manner.

A related matter is the view that business can put its case to government without the need for a government-funded body. This view (which was put forward in the Second Reading speech to the House of Representatives⁷) completely misconceives the role that CAMAC has played. It is not a glorified, publicly-funded lobby group, but rather a group of experienced professionals who devote their time, for only a nominal fee or for free, to the conduct of a rigorous analysis of current problems and issues and the development of carefully devised solutions that have a principled basis and are capable of practical implementation.

Summary

Given the matters raised in this submission, and those raised by other interested parties, the Committee should recommend that the Senate not pass the CAMAC Abolition Bill. In my view, the Committee should also take the further step of recommending that the Government appoint new members to CAMAC and recommence its operation.

Yours faithfully

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⁷ Hansard, House of Representatives, 4 December 2014, p 14245.