FINANCIAL SERVICES COUNCIL

2 March 2015

Dr Kathleen Dermody
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

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

Dear Dr Dermody,

Inquiry into Australian Securities and Investment Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014

Thank you for the invitation to make a submission to the Senate Economics Legislation Committee inquiry into the Australian Securities and Investment Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014 (**Bill**). This submission is made in support of the Bill.

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The Council has over 125 members who are responsible for investing more than $2.5 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world.

The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

Duplicative role and function

We note that the Government's decision to abolish CAMAC has been made in the broader context of its *Smaller and More Rational Government* reforms to reduce the number of Australian Government bodies and streamline the shape of government. The FSC supports the Government's efforts as it recognises that more must be done to support long-term budget sustainability and public administration.

The National Commission of Audit highlighted in its February 2014 report, 'the large number of Commonwealth government bodies and the potential for this to contribute to duplication and overlap, unnecessary complexity, inefficiencies and a lack of accountability within government'. The FSC believes that CAMAC is a prime example of a duplicative and redundant body.

As outlined at [1.17]-[1.18] of the Bill's Explanatory Material, *both* CAMAC and the Australian Securities and Investments Commission (ASIC) currently have the powers to advise and make recommendations to the relevant Treasury Portfolio Minister, on their own initiative or when requested by the Minister, about matters relating to:

- Proposals, amendment or reform of the corporations legislation;
- The operation or administration of the corporations legislation;

- Companies or a segment of the financial products and financial services industry; and
- Proposals to improve the efficiency of the financial markets.

The FSC is of the view that ASIC should carry out its functions without the need for duplication by CAMAC. Indeed, the operations and functions of ASIC have already been the subject of multiple reviews and recommendations including by the Senate Economics References Committee inquiry into the performance of ASIC (June 2014), and as part of the recently concluded Financial System Inquiry (December 2014). These reviews have offered an opportunity for ASIC to enhance its role as the key corporate regulator.

It should also be acknowledged that the Treasury has *principal* responsibility for developing corporations and financial services policy and regulation. This is appropriate given the Department's role in helping to shape Australia's broader economic strategy.

Accordingly, the FSC believes that working together, both ASIC and Treasury are best placed to handle issues currently also within CAMAC's remit.

Recent inquiries – charitable trusts; managed investment schemes

In recent years, the FSC has noted the manner in which CAMAC has carried out some of its inquiries, namely the administration of charitable trusts (Chapter 5D of the *Corporations Act 2001*); and managed investment schemes (Chapter 5C of the Corporations Act). There have been deficiencies in both substance and form.

The FSC and its licensed trustee company members had concerns with the process and recommendations made by CAMAC in its May 2013 report on the administration of charitable trusts. In particular, CAMAC recommended increasing the regulation of licensed trustee companies despite these companies being the most heavily regulated participants in the charitable trusteeship sector.

CAMAC's recommendations were not grounded in empirical data, evidence of trustee wrongdoing or any market failure. Instead, the recommendations represented a significant departure from long-standing core principles of trust law. Indeed none of the reform proposals put forward by licensed trustee companies (including addressing the current dual market in charitable trusteeship services and ensuring competitive neutrality) were adopted by CAMAC.

CAMAC's final recommendations were at least partly a result of deficiencies in process, whereby trustee companies were not afforded proper consultation by CAMAC and a reasonable opportunity to respond to negative assertions being made against them.

The CAMAC charitable trust inquiry followed its August 2012 report into managed investment schemes (MIS) which included wide-ranging recommendations, some of which would have involved significant changes to the regulation and taxation of MIS.

These 2012 MIS proposals had the potential to significantly disrupt the financial services industry. As with its charitable trusts recommendations, some of CAMAC's MIS proposals were wide-ranging. In our view, these recommendations were unworkable and did not reflect relevant industry and market practice.

Therefore, for the reasons outlined above, the FSC supports the Government's decision to proceed with the abolition of CAMAC, to be given effect by this Bill. In essence, we believe it represents an opportunity to remove unnecessary duplication of government function by a body which has presided over process and substance failures.

Yours sincerely

ANDREW BRAGG
Director of Policy & Global Markets