



ASIC
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Inquiry	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation
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Committee member	Dr Daniel Mulino

Question

Dr MULINO: I have a couple of questions on the Corporations and Markets Advisory Committee, CAMAC. If I am correct, between 1984 and 2014 CAMAC and its predecessors produced over 50 reports on a wide range of Corporations Law issues. What alternative processes have been put in place to provide that kind of independent analysis since CAMAC was shut down?

Mr Longo: CAMAC had a long history. It ceased operation around 2014, when it was essentially de-funded by then government. I had a lot of personal experience with CAMAC. It did a lot of excellent work, it had a very small staff and its work was supported largely, if my memory serves me, by the voluntary contributions of senior practitioners and academics. It also had the virtue of having representation from every state and territory. The way that it operated, and one of the reasons it seemed to be effective historically, was that it took on discrete topics. Over a long period, it produced a whole range of work on specific issues, whether to do with insider trading, corporate groups or dividend issues—as I think your question assumes. CAMAC complemented the efforts of Treasury and other contributors to policy. Since then, we have got on without CAMAC, and the heavy lifting on policy development has been undertaken by Treasury, and the work of groups like the Law Council of Australia and other associations continues. From my perspective, CAMAC did a lot of great work. It brought to bear specialised experience from senior legal practitioners and academics, and a lot of their work found its way into law reform.

Dr MULINO: I imagine that some of the work that CAMAC was doing is being done in other places. Cutting to the nub of it, given the independence of CAMAC, given its very high level of expertise—as you said, it had some of Australia's leading practitioners involved—and given its very low cost, do you think CAMAC being de-funded leaves a gap?

Mr Longo: Chris Savundra, our general counsel, has some observations that he wants to make, and then I will finish answering your question.

Mr Savundra: There is not a full-time independent body comprised in the way CAMAC was—that no longer exists. But I want to add to our chair's answer to say that there have been some specific referrals to the Australian Law Reform Commission, which currently is charged with a review of the legislative framework for corporations and financial services. As our chair has said, Treasury has picked up some of the work that CAMAC used to do, and the Australian Law Reform Commission has picked up other work. But the Australian Law Reform Commission covers the whole of the Commonwealth's legislation, and is not a full-time, dedicated body.

Dr MULINO: And Corporations Law is its own very specific, very detailed area.

Mr Longo: Things have moved on a bit since CAMAC was disbanded. The Australian Law Reform Commission has done some excellent work. As to whether there is a gap, it is a complicated policy environment and legal environment. We work very closely with Treasury, the Law Council, the Australian Law Reform Commission and other agencies to make our contribution to making the law function better or any ideas that we might have for law reform that we can discuss with Treasury. CAMAC's contribution was unique, and that was driven by the individuals who ran it and who were outstanding practitioners in their own right. The Corporations Law has its own community of expertise around it, and CAMAC was very effective in bringing that together.

Dr MULINO: Are there other bodies like CAMAC in other jurisdictions?

Mr Longo: In places like the US, given the size of the legal profession there, there is a range of specialised bodies. What is unusual about CAMAC is that it was a body set up by the ASIC Act. I don't know whether Mr Savundra can help here, but what is unusual about CAMAC is that it was a statutory body; it wasn't a private body, if I can put it that way.

Mr Savundra: Dr Mulino, we might take that on notice and try to find you the answer.

Dr MULINO: Yes, thanks. Based on your answers, I think it is fair to say that, if consideration were to be given to re-establishing CAMAC or setting up something like CAMAC, you would agree that some of its strengths were its independence, the fact that it was drawing in very high quality practitioners and also that it was value for money and that any consideration to re-establishing it or something like it should try to replicate those strengths.

Mr Longo: I certainly wouldn't be opposing it; I can see all the benefits that you summarised. In the end, the return of a CAMAC-like body could be seen as complementing what is happening at the moment and we would welcome any help we can get from a CAMAC-like body. But its uniqueness was bringing together in a systematic way a community of expertise around senior legal practitioners and academics on very large and complex legislation that benefited from that kind of input. So, if it were to come back, I am sure it would be helpful.

Dr MULINO: Thank you for your answers.

Answer

We are only aware of one body like CAMAC abroad. A body similar to CAMAC would be a committee comprising independent legal, academic, and professional specialists that has an ongoing statutory mandate to provide researched opinions to Government including policy proposals and recommendations relating to corporate and financial services law.

In Hong Kong, the Standing Committee on Company Law Reform (SCCLR) was established in 1984. The Committee's members leverage their professional expertise to advise the Financial Secretary on amendments to company law and related securities matters.

In other jurisdictions, we understand that ad hoc consultative committees can be called upon to provide independent views to Government on discrete policy issues. For example, in Singapore in 1999, the Company Legislation and Regulatory Framework Committee (CLRFC) was appointed by the Ministry of Finance, the Attorney-General's Chambers, and the Monetary Authority of Singapore for the discrete task of carrying out a fundamental review of the company law and regulatory framework.

For the purposes of this answer, we looked at jurisdictions comparable to Australia including NZ, UK, US, Singapore, HK, and Canada.