

Amended Submission to the Senate Inquiry into Australian Securities and Investment Commission (Corporations and Market Advisory Committee Abolition) Bill 2014

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I was privileged to be a member of CAMAC from 2005 until May 2014, as well as being for some time Chairman of the CAMAC Legal Sub-committee.

During that time, I came to appreciate the process which relied on thoughtful references from Treasury on areas of potential law reform involving corporations and markets in this country.

In the 9 years I was privileged to be involved in CAMAC, the Advisory Committee comprised many different people from all over Australia representing different parts of corporate life who could bring new and challenging ideas to our discussions on the various Treasury references to the committee. There was a mix of distinguished legal academics, legal practitioners both from law firms and from large companies, accountants, merchant bankers and liquidators as well as ASIC and Treasury representatives.

As CAMAC (and its predecessor CASAC) had been established as part of the co-operative scheme between the Commonwealth and the States and Territories to have a national companies regime. A unique part of the composition of the Advisory Committee was that as far as possible each State and Territory would have at least one representative on the Advisory Committee at any given time, and further that each appointee from a particular State or Territory would be jointly approved by the relevant Federal and State or Territory Minister. (In the case of Queensland it was the State Attorney General who would have to agree on any Queensland appointee with the then Treasurer later the Finance Minister, as I understand the way the appointment process worked.) We had good gender balance on CAMAC and it was suitably diverse in terms of the geographical derivation of its members as I have already mentioned. In many ways it stood apart from most other Federal Committees and agencies because of this legislated diversity.

This process in my experience created a unique mix of different ideas and perspectives which could be brought to bear on any reference, so that all relevant issues and concerns were thoroughly canvassed. It did not just bring the big views of Sydney and Melbourne to the table, but a wider whole of country perspective!

Beyond the Advisory Committee itself, the CAMAC secretariat was "lean and mean", with 3 very able permanent staff members, 2 being experienced legal researchers in John Kluver and Vincent Jewell and 1 a proactive administrative assistant in Timmi Parrino. They have been universally praised for their strong ethics, lack of any political bias and, above all else, for their professionalism.

The standard CAMAC procedure on all major references from Government, involved a detailed and well researched discussion paper providing background on the reference with mention of relevant overseas parallels, canvassing all relevant issues (and often seeking answers to key questions) which was prepared reviewed and settled by the Advisory Committee (and in the past 4

years a subcommittee for each reference was established which enabled some external experts in the subject matter of the reference to be asked to provide useful input).

This discussion paper was published on the CAMAC website and usually a hard copy version was prepared and distributed for public comment and a period of 2 to 3 months was allowed for respondents to make submissions. Inevitably, law firms, accounting firms, universities, professional bodies, the AICD and others and several interested individuals would provide written responses on the discussion paper and answer any questions posed on the reference. On occasions I recall over 100 such responses being provided. Where the reference dealt with a particular industry or speciality CAMAC would ask the secretariat to consult with key industry or sector bodies and invite them to submit their views.

All responses were posted on the CAMAC website so this was very much a transparent consultation process. The CAMAC professional staff supported by any special sub-committee appointed for the reference then reviewed all the submissions and drafted a final paper on the subject for the Advisory Committee to review and settle.

Where there was a clear difference of opinion in an industry or sector on key elements in a reference, which was apparent in the submissions of respondents, CAMAC in recent years often resorted to a round table where it invited representatives of the parties making submissions, especially those with strong but divergent opinions, to a face to face meeting hosted by CAMAC (and chaired by the relevant CAMAC subcommittee chair) to discuss these differences to see if a common position could be arrived at or whether other options ought to be considered.

At the end of the round table the views expressed by different respondents were considered by the Advisory Committee at a subsequent meeting and a final paper on the reference was formulated by the CAMAC staff in consultation with the relevant Subcommittee. This final paper would eventually be settled by the Advisory Committee at its next meeting, or over the next 2 or 3 meetings, if the subject matter of the reference was a very complex or lengthy one.

The final paper produced would be sent to our Minister first before being posted on the CAMAC website and before a hard copy of the paper was printed and distributed. The final paper would respond to the terms of the Ministerial reference and it would answer any specific questions posed as well as providing recommendations to the Minister on possible further actions to be taken, be it legislative or administrative reform. On occasions it was neither of these and so in the case of the Corporate Social Responsibility Paper in 2006, the CAMAC recommendation to the Minister was that the Government NOT legislate to mandate that all companies have CSR programs, but rather to encourage companies to voluntarily engage in CSR activities.

There were occasions of a very contentious reference where CAMAC could not reach a unanimous recommendation and this happened in the Sons of Gwalia Report where an overall CAMAC position was agreed to by a majority of the advisory committee, and the minority opinion (of which I was a part) was reported on as well in the final paper that went to the Minister.

CAMAC was to my mind a very robust and interactive law reform body with some of the nation's most prominent corporate lawyers, academics and practitioners on it and its subcommittees, who in turn could talk to others whose views were respected on particular subjects. Arguments could be quite intense and the Advisory Committee worked extraordinarily hard at times to reach the optimal response on a Government reference.

All this was done at a very reasonable cost, given that the CAMAC overall audited annual expenses were less than one million dollars which covered the 3 CAMAC staff and the necessary

supporting administrative costs, as well as the nominal fees and travel expenses being paid to the Advisory Committee and sub-committee members.

Turning to the value proposition for a moment, people like myself who would be expected in practice to earn \$5000 a day for my national law firm would receive a sitting fee for each formal meeting of a few hundred dollars, which for me involved pretty well a whole day away from work with travel to and from Sydney for a 3 to 4 hour meeting every 6 to 8 weeks, as well as attending to reading voluminous material in my own time and when on a subcommittee (and I chaired 2 in the last 2 years) spending considerable time in additional telephone conversations and in teleconferences and video conferences which did not involve any specific payment. Most CAMAC members felt so privileged (as I certainly did) to be involved in such a prestigious and well respected law review body, so that no more than minimal recompense was required.

In the last 2 years of CAMAC's existence CAMAC was acutely aware of Federal cost pressures and in order to keep costs down (rather than seeking more money) the Legal Subcommittee ceased to exist. In addition, Advisory committee members (apart from those resident in Sydney or who could get there at their own expense) were encouraged to dial in to meetings by phone or appear by way of videoconference, using ASIC's nationwide facilities in order to keep the overall costs of CAMAC down.

My final role on CAMAC was to Chair the Subcommittee on the very topical Crowd Sourced Equity Funding reference from our Minister and I heard first hand from one of the ASIC Commissioners, who had last year attended a meeting of IOSCO (for international corporate regulators) that the CAMAC discussion paper on this subject was regarded as the most advanced piece of practical scholarship on this important commercial topic that all jurisdictions were wrestling with, in terms of their regulatory responses.

It has been suggested that if the Government, and in particular Treasury, needs expert advice on a specialist corporate or market regulation topics, it no longer needs an advisory body like CAMAC and instead it could engage independent experts to provide advice when needed.

I agree that is always an option but one must consider the comparative cost of engaging independent experts each time external advice is needed and whether the advice obtained would be as rigorous and as wide ranging and transparently provided as the CAMAC procedures described earlier in this submission, in order to produce such distinguished papers as the one on Crowd Sourced Equity Funding.

The report of an independent expert would, I expect, provide just one opinion or recommendation as the case may be (possibly with options). However it would be most unlikely to provide a majority and minority report, as in the case of the CAMAC paper on the Government's response to the *Sons of Gwalia* decision of the High Court.

It is my strong personal view that at less than one million dollars a year CAMAC was providing significant value to the Australian taxpayer and there is much to recommend that it or a body like it continues into the future.

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