

# Chapter 2

## Views on the bill

2.1 In its various forms, CAMAC has provided advice on corporate law reform to the Australian Government for over 30 years.

2.2 The Corporations and Securities Law Review Committee was established in 1978 under the formal agreement of the Commonwealth and the states. Initially, it was a co-operative advisory body to the Ministerial Council but evolved into an independent, research-based, reform body with its first discussion paper published in 1984.<sup>1</sup>

2.3 In 1989, the Corporations and Securities Law Review Committee was replaced by the Corporations and Securities Advisory Committee as part of a legislative package that set up a national scheme for corporations and financial markets.<sup>2</sup> This committee became CAMAC in 2002 following the referral of corporations powers from the states.

2.4 CAMAC's work reflects two main themes of contemporary regulation of corporate and securities markets:

- reform related to new practices and technologies, such as over the counter derivatives, collateral securities, derivatives and crowd funding or crowd sourced equity; and
- reform related to perceived failings or short comings in matters, such as market integrity, disclosure, collective investments, prospectuses, compensation for loss in the financial services sector, insider trading, personal liability for corporate fault, social responsibility of corporations, external administration, and executive remuneration.<sup>3</sup>

2.5 This chapter considers the proposed abolition of CAMAC in the context of the role it plays in providing comprehensive research and advice on issues relevant to corporate law reform.

### **Purpose of the bill**

2.6 As part of its broad ranging review of public service agencies, the Commission of Audit recommended that CAMAC and its legal committee should be

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1 N. Andrews, 'Hail and farewell, Companies and Markets Advisory Committee...', *Australian Journal of Corporate Law*, 2014, 29(3), p. 225.

2 Explanatory Memorandum, paragraph 1.4.

3 N. Andrews, 'Hail and farewell, Companies and Markets Advisory Committee...', *Australian Journal of Corporate Law*, 2014, 29(3), p. 226.

consolidated into the Department of the Treasury.<sup>4</sup> The bill seeks to carry out that recommendation.

2.7 When introducing the bill, the Parliamentary Secretary to the Treasurer (the Parliamentary Secretary) indicated that the abolition of CAMAC and its legal committee was 'part of the effort to achieve a smaller and more rational government footprint'.<sup>5</sup>

2.8 Indeed, he referred to the broader benefits to streamlining the public service:

Ceasing the operation of smaller bodies and committees generates savings beyond merely the savings of the annual appropriation.

The ongoing operation of small agencies absorbs resources across the broader Commonwealth Public Service, including through the oversight costs incurred by responsible departments, central agencies and integrity agencies.<sup>6</sup>

2.9 The Parliamentary Secretary also indicated that the business environment had also changed and industry would continue to express its views to government on the operation of corporations laws:

The professionalism and capacity of industry representative groups is now much stronger, and business is quite capable of putting its views to government without the need for an additional layer of taxpayer funded bureaucracy.<sup>7</sup>

2.10 The government anticipated that the roles and activities of CAMAC would continue to be provided by:

- the Department of the Treasury, as the policy agency that advises the government in relation to corporate law, financial markets and financial services;
- the Australian Securities and Investment Commission (ASIC), which has capacity to make recommendations on matters connected with corporate law, financial products and service providers, and financial markets more broadly; and
- the Productivity Commission and the Australian Law Reform Commission, in relation to undertaking reviews into the corporate regulatory framework as referred by the government.<sup>8</sup>

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4 Commission of Audit, *Towards Responsible Government: Appendix to the Report of the National Commission of Audit*, Volume 3, March 2014, p. 171.

5 The Hon Steven Ciobo, *House of Representatives Hansard*, 4 December 2014, p. 14,245.

6 The Hon Steven Ciobo, *House of Representatives Hansard*, 4 December 2014, p. 14,245.

7 The Hon Steven Ciobo, *House of Representatives Hansard*, 4 December 2014, p. 14,245.

8 The Hon Steven Ciobo, *House of Representatives Hansard*, 4 December 2014, p. 14,245.

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## Evidence before the committee

2.11 The committee received evidence from a range of groups and individuals, including:

- former members and staff of CAMAC;
- industry bodies; and
- professional associations.

2.12 The main issues raised during the inquiry included:

- the high regard for CAMAC's work and processes;
- value for money provided by CAMAC;
- the replication of CAMAC's functions by other agencies; and
- the continuing ability for states and territories to have input into the reform of corporations law.

### *High regard for CAMAC's work and processes*

2.13 Almost all submissions highlighted stakeholders' high regard for CAMAC's work and processes.

2.14 Ms Joanne Rees, Convenor of CAMAC at the time of its announced abolition, contended that CAMAC was an asset to government:

For the past 25 years, since first meeting in September 1989, CAMAC has been a highly productive and extremely cost-effective agency. It has consistently provided a policy and intellectual dividend to the Australian Government, and the public generally, in the form of its Reports on corporate and financial markets issues. This dividend will be lost with its cessation.<sup>9</sup>

2.15 Ms Rees pointed out that CAMAC's work had resulted in both legislative and industry initiatives, and there was a continuing need for this type of work:

The regulation of corporate and financial markets since the Commonwealth legislation commenced in the early 1990s remains highly dynamic, with the need for constant review and adjustment as these key sectors of the Australian economy evolve and change through domestic and international influences and other developments...

There is no evidence that the process of ongoing evolution of the corporate and financial markets sector is slowing, or that the need for CAMAC-type reviews is diminishing.<sup>10</sup>

2.16 Indeed, Mr Vincent Jewell, a former staff member of CAMAC, contended that:

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9 *Submission 6*, p. [1].

10 *Submission 6*, p. [4].

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.<sup>11</sup>

2.17 Based on the evidence, there is no doubt that CAMAC has delivered high quality research and analysis across a range of subject areas and is considered a strong driver to the continual development of corporations law.

2.18 In this context, the Law Council of Australia noted that:

Australia has become a world leader in certain parts of corporate and markets law reform during the past 30 years, largely because of the research-based input of an expert, independent committee, which has evolved over that time to become CAMAC.<sup>12</sup>

2.19 Mr Bob Baxt AO also indicated that:

CAMAC has been one of the most successful, highly respected, innovative and useful organisations...

It is vital that we do not lose this valuable contribution that has been made to the legal developments in the corporate law area in this country.<sup>13</sup>

2.20 Independence, transparency and bi-partisanship were seen as important attributes which contributed to the success of CAMAC. For example, CPA Australia indicated that:

Market confidence in corporate law and its reform is greatly enhanced by the independent bi-partisan functions of a body such as CAMAC.<sup>14</sup>

2.21 Taking a pragmatic approach, a number of submitters indicated that, while they did not always agree with CAMAC's recommendations, they respected the robust and rigorous processes underlying the development of CAMAC's recommendations. For example, the Australian Council of Superannuation Investors said that they:

...strongly believe that the Committee's independence, evidence-based approach and commitment to widespread consultation have generally led to a productive outcome and to a strong sense of inclusiveness...<sup>15</sup>

2.22 Similarly, the Australian Institute of Company Directors commented that:

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

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11 *Submission 8*, p. 3

12 *Submission 13*, p. 2.

13 *Submission 3*, p. 1.

14 *Submission 15*, p. [1].

15 *Submission 5*, p. 2.

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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.<sup>16</sup>

2.23 That said, the Financial Services Council raised concerns about both the substance and form of some recent CAMAC inquiries:

CAMAC's recommendations were not grounded in empirical data, evidence of wrongdoing or any market failure. Instead, the recommendations represented a significant departure from long-standing core principles of trust law...

In our view, these recommendations were unworkable and did not reflect relevant industry and market practice.<sup>17</sup>

### *Value for money*

2.24 Many stakeholders highlighted the value for money delivered by CAMAC, compared to the cost of achieving the same outcomes through alternative means. For example, AMP indicated that:

We believe the high quality work produced by CAMAC and the significant positive impact it has had on the corporate regulatory landscape in improving regulation and decreasing the cost of doing business, entirely justify its lean operating model and costs.<sup>18</sup>

2.25 Not only did CAMAC draw extensively on the expertise of highly experienced professionals for little or no charge, it minimised its overheads by sharing accommodation and back-office functions with ASIC.<sup>19</sup>

2.26 While the government has introduced the bill on the premise that it would generate fiscal savings, some stakeholders considered that this move may be counter-productive as:

...[CAMAC] was the epitome of efficient government, with deep connections into industry. Further, we believe that without CAMAC to bring in the required resources for the type of reviews that CAMAC delivered (and were needed by Government and industry) is likely to cost the Government far more in third party provider studies and reports.<sup>20</sup>

2.27 The Australian Restructuring and Turnaround Association contended that:

...as a leading professional body, we think it is counterintuitive for the Government to pursue the abolition of CAMAC in the name of more efficient government. CAMAC has delivered real value to the efficient and

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16 *Submission 16*, p. 2.

17 *Submission 4*, p. 3.

18 *Submission 14*, p. [1].

19 *Submission 7*, p. 9; *Submission 8*, p. 2.

20 *Submission 1*, p. 2.

robust operation of corporations, financial markets and the economy as a whole...<sup>21</sup>

2.28 A number of submissions highlighted the contradiction of abolishing an organisation to reduce regulation and red tape when that was its *raison d'être*. For example, the Law Council of Australia suggested that:

... given that no satisfactory alternative has been identified, the abolition of CAMAC will be highly damaging for effective reform in this area, ironically at a time when the Australian Government is seeking to enhance efficient regulation and eliminate red tape, which is precisely the outcome that an expert committee is best placed to achieve.<sup>22</sup>

2.29 Mr Greg Vickey, a former member of CAMAC, considered that the organisation delivered enormous value for money based on the foregone income and time given freely, or at minimal cost, by members.

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.<sup>23</sup>

### ***Replication of the CAMAC's functions***

2.30 Concerns about the replication of CAMAC's functions extended not only the associated government bodies but also the potentially adverse outcomes of more heavily relying on professional lobby groups in the consultation and policy development process.

### ***Capability of the Department of the Treasury and the Australian Securities Investment Commission to take on the role of CAMAC***

2.31 There were some differences in opinion as to whether CAMAC's role was actually duplicated elsewhere in government.

2.32 Some submitters, such as the Law Society of Western Australia, considered that CAMAC's role was not duplicated:

...the role of CAMAC as a specialist independent research based body is not duplicated elsewhere in the government...

To replicate this model through another government department would quickly incur substantial consultancy fees whilst making the rationale for 'streamlining' its function redundant.<sup>24</sup>

2.33 By contrast, the Financial Services Council supported the Government's decision to abolish CAMAC as a means to streamline the public service. In its opinion:

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21 *Submission 1*, p. 2.

22 *Submission 13*, p. 2.

23 *Submission 10*, p. 3.

24 *Submission 7*, pp. 8-9.

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...we believe it represents an opportunity to remove unnecessary duplication of government function by a body which has presided over process and substance failures.<sup>25</sup>

2.34 Irrespective of the debate about duplication, many submissions specifically raised concerns about the ability and capacity of the Department of the Treasury and ASIC to undertake the work of CAMAC.

2.35 Some submissions questioned the ability of the Department of the Treasury to undertake independent and impartial reviews in the same manner as CAMAC.

...it would be difficult, if not impossible, for any existing Commonwealth Government department to maintain CAMAC's independence, another important feature of the CAMAC model. The work of CAMAC continues outside of the political cycle; it has no vested interest in the content of its reports, other than to ensure that they provide a solid foundation for reforms for the benefit of the Australian economy and the reduction of business costs...

It has an enviable reputation for quality and independence. That reputation is not transferable.<sup>26</sup>

2.36 The Governance Institute echoed these concerns. It was of the view that:

...such independence cannot be transferred to a government agency charged with implementing government policy. That is, Treasury cannot replicate the independent research and stakeholder consultation undertaken by CAMAC due to its charter of responding to government policy...

Moreover, the advice provided to the government by Treasury and the manner in which it is reached is not transparent.<sup>27</sup>

2.37 Submissions also highlighted a potential conflict of interest between what is in the best interest of the Department of the Treasury, as the policy agency of the Australian Government, and what might be in best interests of the states and territories.

2.38 Reflecting these concerns, the Corporate Law Teachers Association noted that:

CAMAC has provided a neutral and informed viewpoint about corporate law issues and a rich source of material to generate wide-ranging debates about law reform...It is unlikely that a policy unit in an agency could provide an independent voice nor achieve the same reach in communicating with courts, markets, firms, investors and academics.<sup>28</sup>

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25 *Submission 4*, p. 2.

26 *Submission 7*, p. 10.

27 *Submission 12*, p. 2

28 *Submission 2*, p. 4.

2.39 Other submissions were concerned about the ability of the Department of the Treasury to engage industry adequately. For example, the Australian Council of Superannuation Investors noted that:

The CAMAC structure also has the distinct advantage of leveraging the expertise of expert practitioners from various parts of the corporate regulation ecosystem, without needing to bear all of the overhead expenses of employing these resources. It is difficult to see how these same attributes could be readily replicated by transferring CAMAC's research and advisory functions to the Department of the Treasury, at least without incurring significant additional costs...<sup>29</sup>

2.40 This view was supported by the Governance Institute that indicated:

We also are of the view that Treasury will not be able secure access to the calibre of expertise represented by the members of CAMAC in any ongoing and timely fashion or at comparable cost. The members of CAMAC, many of whom can command far in excess of the sitting fee when undertaking their normal duties, will not be available to Treasury on an 'as-needs' basis when it requires the depth of knowledge and experience to formulate advice on challenges in corporate and market law.<sup>30</sup>

2.41 Further, stakeholders indicated that process by which reforms to corporations law would be developed in the future had not been articulated to them. Chartered Accountants Australia and New Zealand commented that:

We have not seen or been requested to input into alternative means for facilitating constructive corporate and markets law reform.<sup>31</sup>

2.42 In support for the Department of the Treasury and ASIC taking on the functions of CAMAC, the Financial Services Council stated that:

...ASIC should carry out its functions without the need for duplication by CAMAC...

It should be acknowledged that the Treasury has *principal* responsibility for developing corporations and financial services policy and regulation...

Accordingly, the FCS believes that working together, both ASIC and Treasury are best placed to handle issues currently also within CAMAC's remit.<sup>32</sup>

#### *Role of industry representative groups to argue for change*

2.43 While the government considers that industry representative groups are capable of advocating for policy change in the absence of CAMAC, some submissions were not convinced of the merits of such an argument. For example, the Law Society of Western Australia contended that this view:

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29 *Submission 4*, p. 2.

30 *Submission 12*, p. 2

31 *Submission 11*, p. [1].

32 *Submission 4*, p. 2.



...shows a lack of appreciation of the role played by CAMAC, which differs markedly from the lobbying role performed by industry representative groups. CAMAC is a specialist independent research based body. There are differences in the market conditions in each of the referring States and Territories. In a State such as Western Australia, such differences can be marked. Having a consultative body such as CAMAC, with members selected from each of the States and Territories, ensures that corporate law reform proposals can be developed that are balanced and workable in all jurisdictions, rather than being designed to reflect the business and market practices of some jurisdictions only. The role of CAMAC is to provide Government with independent research based guidance on corporations and financial markets law. This is a role which industry representative groups, however sophisticated, are not set up to do.<sup>33</sup>

***Ability for states and territories to have input into reform of corporations law***

2.44 Concerns were raised by some stakeholders about the capacity for states and territories to have a continuing role in the reform of corporate law. This was especially so given state and territories have referred their powers to the Australian Government on the basis that the interests of their business and financial communities would be represented in any ongoing process of corporate reform.<sup>34</sup>

2.45 Indeed, one of CAMAC's recognised strengths was its capacity to represent the interests of the states and territories. As Mr Greg Vickery, a former member of CAMAC, noted:

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!<sup>35</sup>

2.46 The Law Society of Western Australia considered that the actions being taken by the Australian Government were:

...completely at odds with the spirit and intent of the various Corporations Agreements that underpin the referral of powers...

Without the formal structure that CAMAC provides for the representation of the business and financial communities of the referring States and Territories in the process ongoing of corporate law reform, the Society is concerned that the quality, utility and robustness of our corporations and financial markets law will decline.<sup>36</sup>

2.47 In the view of the Australian Institute of Company Directors:

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33 *Submission 7*, p. 6.

34 *Submission 7*, p. 5.

35 *Submission 10*, p. 1.

36 *Submission 7*, pp. 5, 7.

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.<sup>37</sup>

## **Conclusion**

2.48 The committee recognises that CAMAC has contributed extensively to the development of reforms to corporations law in Australia.

2.49 That said, the committee notes that the consolidation of the functions of CAMAC into the Department of the Treasury is expected to improve coordination and accountability and reduce the costs associated with separate governance arrangements. It is also anticipated that this move will increase efficiency in how public funds are used to deliver services to the community.

2.50 In addition, ASIC may on its own initiative, or when requested by the Minister, advise or make recommendations to the Minister about matters concerned with corporations legislation, the financial services industry and financial markets.

2.51 The committee has considered the evidence and formed the view that the abolition of CAMAC would generate savings as intended. It should also be noted that the government would also retain the ability to access expert advice on corporations legislation and related matters through the Department of the Treasury and ASIC.

## **Recommendation**

**2.52 The committee recommends the bill be passed.**

**Senator Sean Edwards**  
**Chair**

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37 *Submission 16*, p. 2.