

Dissenting Report by Labor Senators

1.1 Labor Senators do not support the government's recommendations to abolish the Corporations and Markets Advisory Committee (CAMAC).

1.2 The proposal to abolish CAMAC has met with universal condemnation from corporations law experts. The findings of this committee report repeatedly and exhaustively outline their arguments condemning the proposal. Yet this government has ignored all of their evidence, contained in the following pages, and continues to call for its abolition.

History of CAMAC

1.3 A research-based body of independent experts focused on continuous reform of corporations and financial markets legislation started with the Companies and Securities Law Review Committee (1978), followed by the Corporations and Securities Advisory Committee (1989), which became CAMAC in 2002 following the referral of corporations powers from the states.

1.4 CAMAC has produced dozens of independent expert reports making recommendations to government and opposition on subjects including continuous disclosure, company restructuring to avoid liquidation, executive remuneration, crowd source equity funding, and director liabilities.

Support for abolition

1.5 The much-maligned National Committee of Audit (NCA) included CAMAC in a long list of advisory bodies that they considered should be abolished ahead of the government's first Budget in May 2014, arguing that the role could be performed by Treasury and/or ASIC.

1.6 Several submitters to this inquiry challenged the ability of Treasury to conduct the type of independent research that CAMAC conducted, given its responsibility to report to the Treasurer, and the government of the day. CAMAC has consistently and impartially offered advice that has been utilised by both Government and Opposition, and at times even taken positions that are unfavourable to some in the market.

1.7 For this same reason, there are also concerns about the transparency of Treasury consultation processes. This can be demonstrated by the fact that submissions to exposure bills in the Treasury portfolio (such as the one currently under consideration) are not readily available to either the public, or to other researchers.

1.8 ASIC reports to the Treasurer and has been the subject of repeated parliamentary scrutiny in recent years. It is the view of Labor Senators on the Committee that ASIC is not the appropriate body to assume the role of CAMAC given its role as an investigator with broad reaching investigative powers whilst maintaining confidence and stability of markets. This view is supported by several corporations law experts.

1.9 The only submission to this inquiry in support of the proposal came from the Financial Services Council, in the form of a two page letter criticising the findings of two CAMAC reports into Charitable Trusts and Managed Investment Schemes. The criticism of the latter amounted to asserting that CAMAC's proposals could 'significantly disrupt the financial services industry', and did not reflect 'relevant industry and market practice'. Labor Senators believe that it is not sufficient enough of a reason to abolish CAMAC because it gave advice that was contrary to a particular stakeholder's opinion. Labor Senators believe the value of CAMAC has been its ability to prepare impartial reports that challenge accepted practices.

Opposition to Abolition

1.10 The proposal to abolish CAMAC has met with universal condemnation from corporations law experts.

1.11 Professor Ian Ramsay, Harold Ford Professor of Commercial Law, Director of Studies, Commercial Law, Corporations and Securities Law for the Melbourne Law Masters Program, and the Director, Centre for Corporate Law and Securities Regulation at the University of Melbourne, said:

It's very regrettable that for the saving of three salaries a committee that has worked long and hard over decades to basically facilitate business has been cut....It's been cut with little thought and little understanding of its role.

1.12 John Keeves, Chairman of the Business Law Section of the Law Council of Australia and a corporate lawyer with over 25 years' experience advising on mergers and acquisitions, corporate governance, and corporate and securities law, said:

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.

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.

CAMAC has delivered a substantial quantity of first-class reports and discussion papers very economically... we submit that if CAMAC is abolished, the Government will not be able to secure access to this level of expertise and experience at comparable cost.

The Corporations Committee submits that there is a very strong case for the continuation of the Corporations and Markets Advisory Committee (CAMAC) as an independent, transparent, research-based corporate and market law reform body, constituted to facilitate appropriate input from business, market and legal sources.

1.13 Judith Fox, National Director, Policy & Publishing at the Governance Institute of Australia, submitted:

CAMAC convenes a part-time panel of corporate law luminaries who for all intents and purposes volunteer their time. It is supported by three staff at an annual cost of \$1 million... It's a small body that punches well above its weight and delivers economic benefits that greatly outweigh its funding costs, such as our high standards of corporate governance and a stable and efficient environment for corporate activity. These things are easy to take for granted but will be deeply missed when they are gone.

Governance Institute does not support the bill and the decision to CAMAC... (and) is firmly of the view that CAMAC should be retained.

1.14 Rob Elliot, of the Australian Institute of Company Directors (AICD), said:

The AICD strongly oppose the abolition of CAMAC and we recommend that the proposed abolition not proceed.

It must be recognised that it (CAMAC) has played a critical role in identifying, explaining and analysing corporate law and market-related 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.

We do not believe, at present, that similar expertise could be provided by other government bodies or departments providing advice to the Government.

1.15 John Winter of the Australian Restructuring Insolvency and Turnaround Association (ARITA) argued:

It is the view of ARITA that the abolition of CAMAC is a retrograde move and we therefore oppose the move to repeal Part 9 of the Australian Securities and Investments Commission Act 2001. For an operating cost of less than \$1 million per annum since 1998, CAMAC has delivered sophisticated and important advice and reports to policy makers and industry. Indeed, CAMAC's work continues to be instructive for much of the work we do.

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.

1.16 Professor Peta Spender, Professor of Law at the ANU College of Law and a Presidential Member of the ACT Civil and Administrative Tribunal, writing in her capacity as the President Corporate Law Teachers Association argued:

The CLTA is strongly opposed to the abolition of the Corporations and Markets Advisory Committee (CAMAC) and requests that the proposal be reconsidered, taking into account the vital role played by CAMAC in corporate law policy development and legislation, law reform and scholarship.

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. Its reports and discussion papers have always been accessible to both expert and lay person alike. CAMAC's mix of

practitioners and academics has provided a valuable conduit between the practical operation of corporations and markets and the academic scrutiny of these areas. 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.

1.17 Renowned Australian legal expert Bob Baxt AO, founder of the Australia's Banking Law Association, former Chairman of the Trade Practice Commission (now the ACCC), former Dean of Law at Monash University, and a Professorial Fellow of the University of Melbourne, writing in his capacity as Emeritus Partner, Competition, Regulation and Trade, at Herbert Smith Freehills said:

Let me say unequivocally that in my view the decision to abolish CAMAC was a fundamental error of judgment on the part of the current Federal Government.

CAMAC has been one of the most successful, highly respected, innovative, and useful law reform organisations. It was established some years ago by a previous Liberal/National government to provide guidance to the government on matters relating to corporate law and corporate law reform.

1.18 Gordon Hagart, Chief Executive Officer of the Australian Council of Superannuation Investors (ASCI) wrote:

ACSI would like to add its voice to the widespread chorus of opinion already expressed by a number of representative bodies in the business, corporate governance, investor and legal communities at the time of announcement of the proposed abolition of CAMAC, that this measure is a retrograde step that should be reconsidered by the Government.

1.19 Lee White, writing on behalf of Chartered Accountants Australia and New Zealand, noted:

We believe it is essential that there is independent, transparent, research-based law reform that provides for appropriate input from those impacted by change. CAMAC was an effective route to achieve this and our preference is to retain CAMAC in its present form for this reason.

1.20 Paul Drum, the Head of Policy at CPA Australia, considered:

On the matters of cost and red tape, the benefits generated by CAMAC far outweigh these considerations, particularly given CAMAC's modest scale and historically tight work program. To conclude, we strongly reiterate our urging for reconsideration of the decision to abolish CAMAC.

The permanence of a body such as CAMAC enables responsiveness and flexibility on specific matters, so that they can be dealt with on a referral basis and for these matters to be treated more holistically, thus enhancing the overall integrity of the corporate law.

1.21 Alistair Kinloch, Director of Government Relations, and David Cullen, Group Company Secretary and General Counsel, Governance at AMP, submitted:

AMP considers CAMAC to be an efficient and highly effective law reform body that has made a significant positive impact on Australian corporate

regulation and financial markets. AMP therefore strongly supports the retention of CAMAC.

We believe that CAMAC makes a significant positive contribution to the efficient operation and governance of Australian corporate entities and financial markets. It has proved effective to date in assisting with the enhancement of corporate regulation, the reduction of red tape and decreasing unnecessary costs for companies, shareholders and employees. With the constantly evolving nature of the corporate environment and financial markets, this work is required to continue in the future to ensure Australian companies remain internationally competitive and our financial markets remain secure and robust. CAMAC is a high quality law reform body that operates efficiently and effectively and we believe it is best placed to continue to undertake this work given its high quality track record.

1.22 Joanne Rees, CEO of Allygroup and Convenor of CAMAC on May 14 when decision to abolish was announced, urged:

...the Committee to recommend that the Senate not pass the Australian Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 12014 and recommend that CAMAC be reactivated.

1.23 Vincent Jewell, former Deputy Director CAMAC, considered:

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.

1.24 Greg Vickey AO, former CAMAC member and Special Council at Norton Rose Fulbright, said:

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.

1.25 Writing in his capacity as the President of the Law Society of Western Australia, Matthew Keogh, Senior Associate in the Disputes Group at Herbert Smith Freehills, and a member of the Law Council of Australia's Legal Education Committee, noted that:

The proposed abolition of CAMAC in the manner proposed by the Bill will leave the States without a formal structure for input into the process of formulation of reforms to corporations and financial markets law.

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.

1.26 Michael Tidball, CEO Law Society of NSW, submitted:

The Committees are concerned that the abolition of the Corporations and Markets Advisory Committee ('CAMAC') would leave a vacuum in terms of formal State and Territory input into the process of formulation of reforms to corporations and financial markets law. The Committees are also concerned that the opportunity for independent advice, based on how corporations and markets operate, will be lost.

Conclusion

1.27 The evidence provided to this committee by corporations law experts was unanimously opposed to the abolition of CAMAC.

1.28 Submissions questioned the government's judgment, priorities, and criticised the rationale presented for the abolition, principally the lack of resources Treasury and ASIC have to provide independent expertise, and their ability of to offer independent advice to both Government and Opposition.

1.29 Labor members of the Committee oppose the abolition of CAMAC and recommend that the Bill not proceed.

Recommendation

1.30 Labor members of the committee recommend that the bill not proceed.

Senator Sam Dastyari

Deputy Chair

Senator Chris Ketter

ALP Senator for Queensland