

The Senate

Economics
Legislation Committee

Australian Securities and Investments
Commission Amendment (Corporations and
Markets Advisory Committee Abolition) Bill
2014 [Provisions]

March 2015

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Senate Economics Legislation Committee

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Chapter 1

Introduction

1.1 On 12 February 2015, the Senate referred the provisions of the Australian Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014 (the bill) to the Senate Economics Legislation Committee for inquiry and report by 16 March 2015.¹

1.2 The bill would amend the *Australian Securities and Investments Commission Act 2001* (the Act) to:

- abolish the Corporations and Markets Advisory Committee (CAMAC) by repealing Part 9 of the Act; and
- provide transitional and savings arrangements reflecting the cessation of CAMAC, including transferring CAMAC's records to the Department of the Treasury.

Conduct of the inquiry

1.3 The committee advertised the inquiry on its website and wrote to relevant stakeholders and other interested parties inviting submissions. The committee received 16 submissions, which are listed at Appendix 1.

1.4 The committee thanks all those who participated in, and assisted the committee with, the inquiry.

Background

1.5 CAMAC is a statutory, research-based, reform body focussed on corporations and financial markets.

1.6 CAMAC provides independent advice to the Australian Government on matters relating to the amendment, administration or reform of the corporations legislation; matters relating to companies or a segment of the financial products and services industry; and proposals to improve the efficiency of financial markets.²

1.7 In fulfilling its functions, CAMAC undertakes reviews, as reflected in the presentation and publication of 46 separate reports and related papers, and also responds to particular requests from the Minister for advice. It seeks to ensure that Australian financial markets and corporations operate in a commercial environment of the highest standard, supported by appropriate legislation.³

1.8 A Treasury Portfolio Minister appoints CAMAC members on a part-time basis and in a personal capacity with regard to their knowledge and experience in

1 *Journals of the Senate*, 2013-15, no. 78 (12 February 2015), p. 2156.

2 Explanatory Memorandum, paragraph 1.4.

3 CAMAC, *Annual Report 2013-14*, pp. 15-17, 19.

business, financial markets, law, economics and accounting. CAMAC is supported by a full-time executive of three staff.⁴

1.9 The decision to cease the operation of CAMAC was announced in the 2014-15 Budget. The decision was made in the context of the broader *Small and More Rational Government* reforms to reduce the number of Australian Government bodies and streamline the shape of government. The abolition and merger of some government bodies, including CAMAC, is expected to improve coordination and accountability, reduce the costs associated with separate governance arrangements and increase efficiency in how public funds are used to deliver services to the community.⁵

Provisions of the bill

1.10 Part 1 of the Schedule to the bill amends the Act.

Replacement arrangements

1.11 Part 2 of the Schedule to the bill provides for following transitional matters:

- the transfer of CAMAC's records to the Department of the Treasury;
- maintaining the confidentiality of information disclosed for the purposes of maintaining the Act; and
- the preparation of CAMAC's final annual report by the Secretary of the Department of the Treasury.

Commencement

1.12 The cessation of CAMAC and all of the other amendments in Schedule 1 of the bill will take effect on the 28th day after enactment.⁶

Financial impact

1.13 The cessation of CAMAC is expected to have a positive impact on the fiscal balance of \$2.8 million and an underlying cash of \$3.1 million over the forward estimates. These estimates make allowances for the costs of shutting down CAMAC, such as employee redundancies and contract termination costs.⁷

4 Explanatory Memorandum, paragraph 1.5.

5 Explanatory Memorandum, paragraph 1.6.

6 Clause 2 of the Australian Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014.

7 Explanatory Memorandum, p. 3.

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 1984.¹

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.² 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.³

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

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.⁴ 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'.⁵

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.⁶

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.⁷

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.⁸

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.

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.⁹

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.¹⁰

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

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.¹¹

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.¹²

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.¹³

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.¹⁴

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...¹⁵

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

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.

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.¹⁶

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.¹⁷

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.¹⁸

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.¹⁹

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.²⁰

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

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...²¹

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.²²

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.²³

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.²⁴

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:

21 *Submission 1*, p. 2.

22 *Submission 13*, p. 2.

23 *Submission 10*, p. 3.

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

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

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.²⁶

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.²⁷

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.²⁸

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...²⁹

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.³⁰

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.³¹

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.³²

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:

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.³³

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.³⁴

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!³⁵

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.³⁶

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

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.³⁷

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

37 *Submission 16*, p. 2.

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

APPENDIX 1

Submissions received

Submission Number	Submitter
1	Australian Restructuring Insolvency & Turnaround Association
2	Corporate Law Teachers Association, Monash University
3	Professor Bob Baxt
4	Financial Services Council
5	Australian Council of Superannuation Investors
6	Allygroup
7	The Law Society of Western Australia
8	Mr Vincent Jewell
9	The Law Society of New South Wales
10	Mr Greg Vickery
11	Chartered Accountants Australia and New Zealand
12	Governance Institute of Australia Ltd
13	Law Council of Australia
14	AMP
15	CPA Australia
16	Australian Institute of Company Directors

