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Dear Minister

Cessation of the Corporations and Markets Advisory Committee (CAMAC): Exposure Draft Bill

Governance Institute of Australia is the only independent professional association with a sole focus on the practice of governance. We provide the best education and support for practising chartered secretaries, governance advisers and risk managers to drive responsible performance in their organisations.

Our Members are all involved in governance, corporate administration, risk management and compliance with the Corporations Act 2001 (the Act), with their primary responsibility being the development and implementation of governance and risk management frameworks in public listed and public unlisted companies, private companies, and not-for-profit organisations.

Government's rationale for abolishing CAMAC

The government has released an exposure draft Bill and associated explanatory material to give effect to the 2014-15 Budget decision to abolish CAMAC. The rationale provided in the explanatory material is that the decision was made in the context of the broader *Smaller and More Rational Government* reforms to reduce the number of Australian Government bodies and streamline the shape of government.

Opposition to the bill to abolish CAMAC

We do not support the bill and the decision to abolish CAMAC.

We believe that the consultation on the bill necessarily provides an opportunity for a public discussion as to whether CAMAC should be retained. Governance Institute is firmly of the view that CAMAC should not be abolished but should be retained.

We set out our rationale for this below.

Support for retention of CAMAC

While we understand the government's desire to reduce the number of Australian Government bodies as part of streamlining government, we are of the view that any such rationalisation must proceed on the basis of the merits of each body and the value it can bring to government

decision-making rather than simply on the basis of reducing the numerical total of Australian Government bodies.

That is, Governance Institute is strongly of the view that any review of Australian Government bodies needs to take into account whether the functions of each body are:

- no longer required, or
- if required, can be replicated or provided equally efficiently by a government department.

If the functions of a particular body are still required and cannot be replicated or delivered equally efficiently by a government department, Governance Institute is of the view that the body should be retained.

We also note that the Commission of Audit did not recommend abolishing CAMAC. It recommended merging it with another government agency. It was one of only six government agencies recommended for merging rather than abolition.

Functions of CAMAC

CAMAC has been supplying advice to successive Australian Governments since 1989 on issues that arise in corporations and financial markets law and practice. It is most usually called on after a corporate disaster reveals a deficiency in the current law or to assess how best to deal with new developments that mean that regulation needs to be introduced or amended.

Importantly, the advice provided by CAMAC is independent and the process of arriving at that advice is transparent. It is a research-based reform body, structured so as to facilitate the input of business, advisory groups and legal experts. Its members are appointed on the basis of their knowledge and experience in business, financial markets, law, economics or accounting, with assistance provided by a Legal Committee, whose members have expertise in corporate law.

We also note that the advice provided by CAMAC is not subject to the constraints of the political and electoral cycle.

Can the functions of CAMAC be replicated by Treasury?

CAMAC is respected by all stakeholders for the quality of its in-depth research and stakeholder consultation. Stakeholders also view the independence of CAMAC as a great strength. Governance Institute is 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.

While we appreciate the role that Treasury plays in coordinating advice, we note that its provision of advice to governments is frequently in response to particular policies that a government wishes to introduce and expressions of how such policy can be implemented. CAMAC provides advice on matters on which the government has not yet formed a policy position, in order to assist the government to formulate policy.

Moreover, the advice provided to the government by Treasury and the manner in which it is reached is not transparent. The manner in which CAMAC provides comprehensive research in the form of a discussion paper, with the opportunity to provide feedback on questions canvassed in the discussion paper, is very transparent.

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.

In the quarter century that it has operated, Governance Institute members have heard consistent praise for the expertise represented by CAMAC and the quality of its research and reports. We note that even those reports that are not enacted into law by the government remain a valuable resource for business, as the depth of research and examination of corporate law issues ensures they are a first point of reference when business is considering how to deal with particular matters that remain challenging.

While industry representative groups and business will continue to express their views to government on matters relating to the corporations law which they view as important, this process differs considerably from the provision of independent advice. The evolution of the corporate and market law is strengthened by the input of both processes, but will be diminished by a reliance on one only. Indeed, ensuring broad input from all stakeholders ensures that any reform introduced by the government fulfils its broader deregulatory initiatives rather than the particular interests of any one business or industry group.

Governance Institute is of the view that the functions of CAMAC cannot be replicated by Treasury. Rather the work of CAMAC supplements the work of Treasury.

The benefits that CAMAC has brought to corporate and market law reform

The role CAMAC has played in advising the government of the day has played a vital role in shaping how our corporations and financial services are regulated. We can point to some of the changes that have been brought in following acceptance of CAMAC's recommendations by the government of the day, as follows:

- The introduction of enhancements to the continuous disclosure regime has been central to ensuring that market sensitive information is released to all investors simultaneously and is integral to the integrity of our equity markets.
- CAMAC's recommendations on related party financial transactions ensured that conflicts of interest did not intrude on the proper functioning of the market.
- The introduction of a statutory derivative action removed obstacles to shareholders in bringing litigation.
- The enhancements to the requirement that directors and senior executives of a listed entity disclose any trading by them in the securities of that listed entity meant that trading by directors did not undermine market fairness and efficiency.
- CAMAC was the first body to examine personal liability for corporate fault.
- CAMAC has also taken a leading role in external administration, including the operation of the voluntary administration procedures.

In addition to legal change, CAMAC has played a role in attitudinal change. The 2009 CAMAC report on diversity on boards of directors, together with the ASX Corporate Governance Council initiatives that followed the release of that report, are now reflected in significant improvements in gender diversity on ASX boards.

All of these reforms have greatly strengthened corporate governance in this country. Australia has a very strong reputation globally for corporate governance. The quality and independence of CAMAC's advice plays no small part in shaping those high standards and we believe that the Australian Government should seek to support the continuing strength of that framework.

CAMAC's role in reducing red tape

Corporations and the financial markets are the lynchpin of Australia's economy. If they do not function efficiently, there will be detrimental consequences for business, investors and the capital markets.

Having an expert, research-focused, consultative and independent body like CAMAC to develop and advise the government on best practice policy has made a significant contribution to the strength and efficiency of our corporate and financial institutions.

CAMAC has been at the forefront of cutting-edge policy, with its most recent projects including recommendations to facilitate crowd-sourced equity funding and reforms to modernise the AGM to better engage retail shareholders. In relation to the first matter, we note that the CAMAC report is the first of its kind in the world and is being reviewed by policy makers globally, many commenting on the quality of the research and recommendations.

On the matter of the future of the AGM, submissions to CAMAC on the AGM noted that it is an essential component of the governance framework, yet it is an outdated, costly and inefficient institution which meets no one's interests — neither shareholders nor companies. There was significant interest in the CAMAC report that was to be issued in 2014, with business hopeful that its recommendations would provide a way forward in terms of reducing red tape and costs.

Governance Institute notes that many of the recommendations of CAMAC have not been implemented by various governments. We are of the view that the failure lies not with the advisory body, but with the lack of implementation of its recommendations. Greater deregulatory benefits are to be gained from a stocktake and implementation of the recommendations of CAMAC which have not been implemented to date than abolition of the body making those recommendations.

Cost savings

The members of CAMAC and the Legal Committee all serve on a part-time basis, and are supported by three employees.

In addition to having travel costs covered (which were reducing in consequence of using ASIC video-conferencing facilities), CAMAC members are entitled to a sitting fee, determined and published by the Federal Remuneration Tribunal, when attending CAMAC meetings or subcommittee meetings in person or by phone/video.

That sitting fee, as of May 2014, was \$772 for attending a CAMAC meeting or when one's cumulative hours of attendance at subcommittee meetings reached three hours. That fee included preparation time, or stated another way, there was no additional fee for time spent in reading Committee papers and otherwise preparing for a CAMAC or subcommittee meeting. Given the complex matters that CAMAC considered, Governance Institute members have no hesitation in noting that the time spent preparing for a CAMAC or subcommittee meeting and reading committee papers would be significant. Yet CAMAC members provided their time for free in preparing for meetings.

Over the years, some CAMAC members chose not to receive any sitting fee.

The costs to maintain CAMAC are very low — \$1 million per annum. It is difficult to conceive of this tiny organisation as a bureaucracy.

The financial savings generated by abolishing it are insignificant, particularly in light of the loss of the rigour in research and advice generated by CAMAC and its reach in ensuring the proper functioning of our markets.

Recommendations

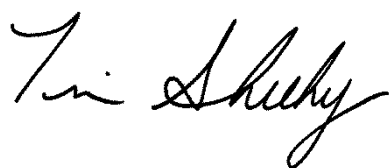
Governance Institute opposes the Cessation of the Corporations and Markets Advisory Committee (CAMAC): Exposure Draft Bill.

Governance Institute recommends that CAMAC be retained and that a stocktake and implementation of its recommendations be undertaken as part of the government's drive to reduce red tape.

Should the government not accept our submission that CAMAC be retained, **Governance Institute recommends** engagement with stakeholders such as Governance Institute and other professional associations to constructively discuss how best to facilitate independent, transparent, research-based corporate and markets law reform, which would ensure that appropriate input to the development of corporate law is received from business, market and legal sources.

We are more than happy to discuss these matters with you.

Yours sincerely

A handwritten signature in black ink that reads "Tim Sheehy". The signature is written in a cursive, flowing style.

Tim Sheehy
Chief Executive