

Exposure Draft

**Australian Securities and Investments commission amendment (Corporations and Markets
Advisory Committee Abolition) Bill 2014**

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Introduction

This submission addresses the proposal to abolish the Corporations and Markets Advisory Committee (CAMAC). The author recommends that such abolition is unwise. Over the last two decades, CAMAC has played a central role in implementing reforms that have cut red tape and enhanced business efficiency. This submission strongly urges the government to review its position on abolition CAMAC as this change will not be beneficial to anyone and will not play an important role in implementing *Smaller and More Rational Government* reforms.

Justification for the Keeping CAMAC

CAMAC was set out in 1989 to provide the responsible minister with an independent source of advice on:¹

- the amendment of the corporations' legislation;
- the operation and administration of that legislation; and
- the enhancement of the financial services laws to ensure their efficiency.

Under the current proposal, CAMAC will be abolished. Its role will be taken over by the Treasury in the hope of reducing duplication and increasing efficiency in government.² Such change in the law does not take into account the crucial role that CAMAC has played over the years in advising governments regarding key reforms that have shaped the Australian corporations legislation. In fact, CAMAC has provided a rich source of research and recommendations to Australian governments on fundamental concepts in the corporations' legislation such as share buybacks, continuous disclosure and insider trading... Its latest report on crowdfunding provides extremely useful recommendations for Australia and overseas on the steps that may be taken to deal with this new form of finance.

¹ Australian Securities and Investment Act 2001 (Cth), 148(1).

² Explanatory Memorandum, Exposure Draft Australian Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014, [1.6].

Additionally, many of the recommendation made by this law reform body have become part of our lexicon of corporate law.

In view of the central role that CAMAC has played in shaping our corporations' legislation, abolition this body is not recommended. The Treasury is not equipped to deal with corporate law reforms on a day to day basis. This was especially apparent in 2007 when the Treasury considered a number of corporate law reforms. One of the consultation papers was 'Review of Sanctions in Corporate Law'. The consultation paper was very important as it was dealing with issues such eliminating red tape, enhancing Australia's penalty regime and introducing defences that may be relied on by directors if they breach their duties. At the Treasury roundtable discussion that took place to hear from different stakeholders regarding this paper, there was uncertainty regarding the fate of the consultation paper as the Treasury was concerned that there might be a change in government and, as such, all their efforts and all the resources the different stakeholders have put into their submissions will be ignored. In fact, the change of government did occur and the issues in the consultation papers were no longer prominent on the government's agenda. Further, no report was issued by the Treasury regarding any of its findings as the Treasury had new priorities. The lack of publication of the findings is problematic as it has a negative impact on the transparency of the law reform's processes.

It is crucial for the government to have at its disposal an independent research-based reform body that advises the responsible minister on corporate law issues as such a body's recommendations will not be influenced or directed by government agendas. The recommendation will be driven by research and will focus on the protection investors and businesses. They will further be based on widespread consultation. As Professor Ramsay noted, that the exposure draft 'cuts directly against the government's own philosophy and position about facilitating business.'³ This perspective is shared by the Governance Institute which has noted that the abolishment of CAMAC is 'a blow to business.'⁴

CAMAC allows the government to hear different perspectives from businesses, investors and other stakeholders. Removing this body would send the wrong message to the world as it will highlight that Australia is no longer keen to ensure corporate efficiency and leadership in the financial services area. The role of CAMAC remains central in corporate law reforms.

Lastly it is important to remember that CAMAC has issued a number of reports that have changed the Australian corporate landscape at minimal cost. As such, abolishing such a body does not in any way aids the government in saving cost or cutting red tape. More harm than good will be caused from the abolition of this law reform body.

Conclusion

This submission urges the government to review its stand regarding abolishing CAMAC as this body:

- ensures the government is provided with independent researched-based recommendation that take into account the interest of businesses and stakeholders;

³ Georgia Wilkins, 'Abolishing of Corporations and Markets Advisory Committee' *Sydney Morning Herald* (14 June 2014)

⁴ *Ibid.*

- has resulted in major reforms that have changed the corporate landscape at minimal cost. These changes have had a drastic effect in cutting red tape, something this government supports and promotes; and
- ensures Australia remains a leader in corporate and financial services law reforms.

Accordingly, CAMAC should not be abolished.

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