

As the Exposure Draft Explanatory Material notes the background to this proposed amendment is as follows:

CAMAC was established in 1989 as part of a legislative package that set up a national scheme for corporations and financial markets. 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.

This proposal will abolish what has been an extremely important aspect of our corporate law. This is the independent advice on matters relating to possible improvements to our corporate law through reports that can guide government legislation in this area. CAMAC is a significant federal statutory body that has provided independent thoughtful advice to the responsible Minister on the administration of corporate and financial services laws or changes to them. Not only has CAMAC undertaken some work on its own initiative, such on Members' Schemes of Arrangement (2009) it has dealt with a number of issues referred by government Ministers. A key argument against the abolition of CAMAC is that body operates with minimal full time staff but it draws upon the essentially unpaid contributions of a very wide range of experts across the range of areas throughout Australia in corporate law. It includes many practitioners, academics professional association directors who are strategically placed and very well qualified to provide input into areas of review. The value of such research if it were to be paid for would be extremely high. The structure allowed for the experts to provide their input in a way that costs the taxpayer nothing; only administration costs are being met in order to gain this expertise. It is unclear why the Australian government, at a time when funds are very constrained, would turn away from this arrangement. We note that the notification of the proposed amendments states that:

The decision [to abolish CAMAC] was made in the context of the broader *Smaller and More Rational Government* reforms..

The abolition of CAMAC will result in the most minor reduction in the size of government yet it will almost certainly make government *less rational* as there will be less expertise to rely upon in respect of our corporate law.

CAMAC has consistently produced exceedingly balanced and sensible reports on areas of corporate law that were most in need of review. Specialising as we do in the area of insolvency law we are most familiar with important work that CAMAC has done in reviews of corporate insolvency law. Some examples of the useful analysis and recommendations that have arisen from CAMAC reports in respect of corporate insolvency include the report on Corporate Voluntary Administration 1998, Rehabilitating large and complex enterprises in financial difficulties 2004 and Issues in External Administration 2008. The 1998 report on voluntary administration provided numerous recommendations that enabled the voluntary administration procedure to work more effectively. Given that it was at that time a completely new system and somewhat unique in the manner in which it operated, the report dealt with a number of matters that might be described as tidying up and refining the legislation. Although it took some time before many of these recommendations were incorporated into the legislation in the Corporations Amendment (Insolvency) Act 2007 (Cth) that does not diminish the significance of the Report. Additional recommendations were found in respect of rehabilitating large companies in the 2004 report. That report and the earlier 2003

Discussion Paper also are useful documents for those who have suggested that there is room for a Chapter 11 type procedure in Australia. In the report the Committee concluded on this point that there was no “compelling need” that “requires or justifies adopting Chapter 11”. It concluded that Chapter 11 “could not be introduced into Australia without fundamental changes to the rehabilitation process and the role of the courts, for which there is no apparent demand”. These conclusions already produced may of course need to be reconsidered in the light of new circumstances but what we can be certain of is that they provide a detailed and informed view of the issues that need to be looked in respect of this topic.

What the history of the CAMAC reports in the area of corporate insolvency shows is that the material produced is of the highest value and was produced at extremely low cost relative to what might be incurred in obtaining private research. There is no doubt that law review needs to be ongoing. The question now becomes where does this work take place now? Are we to be left with the inadequate scenario of legislation being drafted only in the light of bleating by sectional interests without a measured and considered analysis? If we do not have this important source of advice to government, our corporate law will inevitably be poorer and ultimately our business operations will be less efficient. The loss will be borne by us all in economic terms.

Whilst there are various law reform bodies in existence, none operate specifically in the area of corporate law in the way that CAMAC was. The other law reform bodies have such a broad range of topics to cover that it is unlikely that significant aspects of Corporate Law will be considered. Indeed the last comprehensive review of corporate insolvency law by the Australian Law Reform Commission was in 1988. The apparent lack of willingness to invest in comprehensive research and review into corporate and related commercial and financial markets issues through the ALRC and other law reform bodies emphasises the importance of the government retaining the Corporations and Markets Advisory Committee (CAMAC). As such it seems likely that our law and hence ultimately the economy and members of our society will be the poorer for the demise of CAMAC. We strongly urge that these amendments not be proceeded with.