

22 May 2014

The Hon Senator Mathias Cormann
Minister for Finance and Assistant Treasurer
PO Box 6100
Senate
Parliament House
Canberra ACT 2600

Dear Senator Cormann

Issues affecting the regulation of corporate Australia arising from the Australian Government's budget

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.

Scoping study into the sale of ASIC's registry business

We note that the Australian Government's budget included \$11.5 million for a scoping study to be undertaken by the Department of Finance into the sale of the registry business of the Australian Securities and Investments Commission (ASIC), as well as three other government-owned companies: Australian Hearing, Defence Housing Australia and the Royal Australian Mint. The scoping study is expected to be the first stage in the privatisation of the registry business.

In 2013, ASIC collected \$720 million in fees — which went into consolidated revenue — on a cost base of \$142 million. There are threshold questions to be answered, such as whether the government is selling the asset itself or the revenue stream from the business. Another threshold question is whether the government is expecting to receive a dividend stream from the ultimate owner. At this stage there are no terms of reference available for the scoping study.

Governance Institute strongly recommends that stakeholder input be sought on the terms of reference for the scoping study.

The registry business is a database providing information about Australia's 2,080,028 companies, as well as business names, and financial service licensees. Governance Institute is on record as having recommended that different possibilities should be canvassed for how it

should be run, including the complete devolution of the registry business to create the equivalent of the Companies Office in the United Kingdom, or setting up the corporate registry as a separately managed business, leaving ASIC itself more tightly focused on corporate, market and finance industry supervision and enforcement.

Our Members have responsibilities to lodge corporate information on the registry, including sensitive information such as the names and addresses of officers of companies. Indeed, our Members are officers, whose details sit on the registry. Our Members also have statutory obligations to provide financial and governance reporting to ASIC. As such, Governance Institute is a key stakeholder with an interest in how the information held on the registry is to be managed.

We note there are a variety of questions to assess, such as whether the government is providing a private body with the power to create legal entities, given that the ASIC registry business oversees company registrations. Issues of control and assurance would need to be considered if this is the case.

Furthermore, the information contained on the register is compelled by law. The registry business is therefore a monopoly. The Australian Securities Exchange may provide a model for how such issues could be considered, as well as questions of how penalties are to be imposed if the registry business is privatised.

Fees are currently to be found in legislation for the most part, so another question is whether the government believes it should retain an influence on fees.

We are of the view that stakeholders' views on the terms of reference are essential in ensuring that the scoping study provides the best outcome for the management of information relating to corporate Australia, including financial services licensees.

Abolition of the Corporations and Markets Advisory Committee

We also note the Australian Government's budget announcement of the abolition of the Corporations and Markets Advisory Committee (CAMAC), with its functions to be transferred to Treasury. We wish to convey our concern with this decision.

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 amended.

Importantly, the advice provided by CAMAC is independent. 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 are the view that access to the calibre of expertise represented by the members of CAMAC cannot be replicated by Treasury in any ongoing and timely fashion.

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.

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:

- 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 insider trading did not undermine market fairness and efficiency.

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

The members of CAMAC and the Legal Committee all serve on a part-time basis, and are supported by three employees. The costs to maintain CAMAC are very low — \$1 million per annum. The 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.

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.

Governance Institute strongly recommends that CAMAC not be abolished and that a stocktake and implementation of its recommendations be undertaken as part of the government's drive to reduce red tape.

Takeovers Panel

We also note the decision by the Australian Government in April this year to reduce the number of members of the Takeovers Panel. The original number of 47 members of the panel ensured that sufficient members would always be available to hear disputes, given that in periods of heavy merger activity, or disputes involving multiple bidder or suitors, conflicts of interest among panel members could see many declare themselves unavailable to hear the matter. Members could also be unavailable due to constraints on their time.

Reducing the size of the panel could give rise to the situation where there are insufficient panel members available who are free of conflicts of interest to hear disputes.

Members of the panel are paid a retainer of a little over \$5,000 per annum. The cost to the government of accessing the calibre of expertise represented on the panel is extremely low. Reducing the size of the panel does not represent savings to the government of any significance, yet creates real potential for the panel to be unable to undertake its work.

A move away from industry self-regulation is not deregulation

Both the Takeovers Panel and CAMAC represent forms of industry self-regulation, where industry itself participates in establishing frameworks for the proper functioning of our markets.

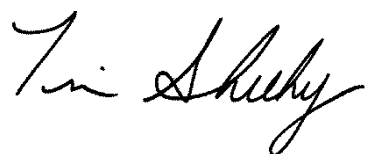
The Australian Government's decision to curtail the functional capacity of one body and abolish the other is a strike against industry self-regulation. Governance Institute finds the lack of support of industry self-regulation from the Australian Government particularly puzzling, given

its focus on deregulation. We are of the view that the Australian Government, given its strong message that it seeks to instigate deregulatory measures, would rather encourage industry self-regulation than seek to shut it down.

Governance Institute strongly recommends that the government move to strengthen industry self-regulation as part of its deregulatory focus rather than weaken industry self-regulation.

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