Industry Self-Regulation
in Consumer Markets

Report prepared by the Taskforce on Industry Self-regulation

August 2000

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ISBN 0 642 740437

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Printed by Union Offset Printers

Transmittal letter to be stripped in by printer

Terms of Reference

Background

I. As part of the Commonwealth's election policy commitment to encourage industry to develop effective self-regulation approaches, the Minister for Financial Services & Regulation has set up a Taskforce on Self-regulation to inquire into and report on aspects of self-regulation in consumer markets. The Taskforce is also to have regard to the recommendations of the Commonwealth Interdepartmental Committee on Quasi-regulation released in December 1997 (the *Grey Letter Law* report) and the *Codes of Conduct Policy Framework* released by the then Minister with responsibility for consumer affairs in March 1998.

II. The Taskforce consists of representatives from a range of industry and consumer groups.

III. Self-regulation includes those regulatory regimes which have been generally developed by industry (sometimes in cooperation with government but enforced exclusively by industry). Self-regulation excludes explicit government legislation and regulation as well as regulation developed by government and handed over to industry for implementation, although for the purposes of this Taskforce it could include co-regulation, where a scheme is developed by industry with some government involvement but industry is fully responsible for its implementation. Examples of self-regulation include:

- individual businesses choosing to adopt a standard;
- private institutions regulating themselves by a set of rules; and the
- introduction by industry participants of an industry-wide regulatory code.

IV. Self-regulation could also include professional bodies' codes of conduct, industry service charters, guidelines and standards, as well as industry based accreditation and complaint handling schemes.

V. Self-regulation is increasingly being used as an alternative to quasi-regulation and government legislation and there is some overlap between them. Identifying best practice in self-regulation, and identifying the limits of self-regulatory schemes, has important implications for the government's approach toward a more efficient regulatory framework for both businesses and consumers. The role of government in encouraging self-regulation also has an impact on compliance costs, flexibility and the coverage of self-regulation.

VI. The Government is committed to providing a competitive market environment while attempting to reduce the regulatory burden on Australian business. Industry self-regulation is often a more flexible alternative to direct government regulation.

VII. However, it is necessary to ensure that self-regulation does not itself become a burden to industry with onerous compliance costs, particularly for small businesses. It is also necessary to minimise the anti-competitive potential of industry self-regulatory schemes by ensuring that such schemes do not set up barriers to entry to the industry, nor stifle innovation or competition amongst industry participants. Self-regulation is not appropriate in circumstances where other forms of regulation are able to provide better outcomes at a lower cost.

Terms of Reference

1. The Government has an objective of lowering regulatory costs on business, improving market outcomes for consumers and encouraging self-regulation, including promoting quality codes of conduct in consumer markets. The Government also has the objective that industry should take increased ownership and responsibility for developing efficient and effective self-regulation where it is the most appropriate regulatory response.

2. The Taskforce on self-regulation is to inquire into and report on aspects of self-regulation pertinent to those objectives, including:

   (a) the types of self-regulation in use in consumer markets in Australia;

   (b) gaps and overlaps in the coverage of self-regulation;

   (c) those industry environments and market circumstances where different types of self-regulation are likely to be most effective;

   (d) best practice and cost effective self-regulation methods and approaches;

   (e) approaches to promoting and coordinating industry self-regulation, including the appropriate role of government and the development of industry codes as well as other approaches to self-regulation; and

   (f) options that facilitate the improvement and harmonisation of dispute resolution schemes while reducing costs to industry and improving outcomes for consumers.

3. The report is to address the effectiveness of self-regulation including the identification of where different forms of self-regulation have worked well and why and aspects of self-regulation requiring more attention. This will include identifying cost-effective best practice in self-regulation.

4. In undertaking its inquiry, the Taskforce will:

   (a) focus on self-regulation in consumer markets where the Commonwealth Government has constitutional responsibility or where there is a national scheme in place;

   (b) nonetheless, have regard to the changing regulatory environment and, in particular, developments in industry self-regulatory practice in other jurisdictions within Australia and overseas;

(c) recognise the dynamics of Australian markets, particularly the impact of globalisation, increasing vertical integration, and the growth of 'hybrid' products that span traditional markets or industries, noting the implied challenges for industry self-regulation;

(d) undertake appropriate consultations, including with peak business organisations, small business groups, consumer representatives and government bodies;

(e) publish a draft report with recommendations for comment and criticism by interested parties; and

(f) present a final report with recommendations to the Minister for Financial Services & Regulation no later than 31 May 2000 (extended to 31 August 2000).

5. The Minister will seek to use the findings of the inquiry to promote efficient and competitive markets. However, any outcomes from the inquiry would themselves be subject to consultation and regulatory impact analysis.

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