

APPENDIX A

Terms of Reference

As part of the Commonwealth's response to recommendations made by the Small Business Deregulation Task Force, a Commonwealth inter-departmental committee (IDC) is to inquire into and report on aspects of quasi-regulation, including on its relationship with self-regulation and with explicit government regulation.

The IDC is to consist of representatives from the Department of the Prime Minister and Cabinet, the Treasury, the Attorney-General's Department, the Department of Industry, Science and Tourism, the Australian Competition and Consumer Commission, and the Office of Regulation Review (ORR). The ORR is to chair the IDC.

"Quasi-regulation" covers a wide range of rules or arrangements for which there is a reasonable expectation of compliance and for which there is government (or court) involvement, such as in formulation, enforcement or funding. Quasi-regulation excludes explicit government regulation. Examples of quasi-regulation are:

- those codes of conduct in which there is some government involvement;
- co-regulation, where government and industry cooperate in development and operation of a scheme, but which does not form part of explicit government regulation; and
- voluntary standards made by Standards Australia or other bodies such as international organisations.¹

While self-regulation typically lies outside the scope of quasi-regulation, there is overlap between them which may have important consequences for regulatory best practice and for the extent of compliance costs.

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¹ The Committee subsequently concluded that voluntary standards made by Standards Australia are not examples of quasi-regulation (see Chapter 2, Section 2.6, for details)

1. The Government has an objective that, where appropriate, industry should take increased ownership and responsibility for developing efficient and effective regulation (having regard to minimum feasible compliance costs). The Government also intends to reduce the regulatory burden and compliance costs on all sectors of the community, but particularly on small businesses.
2. The IDC on quasi-regulation is to inquire into, and report on, aspects of quasi-regulation pertinent to those objectives, including:
 - (a) the characteristics and extent of quasi-regulation;
 - (b) the circumstances in which quasi-regulation is a viable alternative to government regulation;
 - (c) essential features of successful quasi-regulation; and
 - (d) processes for monitoring and reviewing quasi-regulation to ensure that it is current, effective and efficient.
3. The report of the IDC is also to propose guidelines as to the circumstances where self-regulation is likely to be appropriate, and to contrast those with circumstances where quasi-regulation or, alternatively, explicit government regulation, may be appropriate.
4. For the purposes of this inquiry, some areas which could be regarded as quasi-regulation should *not* be addressed because they are the subjects of other inquiries and processes. They are:
 - (a) international treaty obligations of which there is a reasonable expectation of compliance even though Australia has not ratified the treaty; and
 - (b) expectations of compliance which stem from the way regulations are administered, rather than from the actual regulations — this would include administration of taxation and customs regulations, for example.
5. In undertaking this inquiry, the IDC shall:
 - (a) focus mainly on quasi-regulation in the Commonwealth domain;
 - (b) coordinate with a separate working group of Commonwealth, State and Territory officials which will report on quasi-regulation to the

National Small Business Summit in mid-1997, and make use of information exchanged between jurisdictions in that forum;

- (c) complement work being developed by the Minister for Customs and Consumer Affairs on a strategic framework for voluntary codes of practice;
 - (d) undertake appropriate consultations, including with peak business organisations;
 - (e) present its report (with recommendations) to the Government by 31 December 1997.
6. The Government's response to the report of the IDC will be used to update the ORR's publication "*A Guide to Regulation*".
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Post script to the terms of reference

Consequent on correspondence between the Assistant Treasurer and the Attorney-General and the Minister for Industry, Science and Tourism, the Committee was asked to report also on the following matters:

- the relationship between voluntary standards and regulatory standards;
- how a better understanding of the nature of voluntary standards could be promoted;
- the issues raised by courts' use of voluntary standards and how they might be addressed; and
- appropriate criteria to be met before any code is prescribed under the Trade Practices Act.

In addition, the Committee was asked to ensure that the consultation process was not limited to peak business organisations but included community organisations and relevant government agencies and authorities.