Key issues in industry self-regulation

The Minister for Financial Services & Regulation, the Hon Joe Hockey MP, established an independent Taskforce to advise him on promoting effective industry self-regulation. On 6 June 2000, the Taskforce released its draft report for public discussion. The Chair, Professor Berna Collier, outlines some of the main issues discussed in the draft report.

The Taskforce has examined self-regulation in terms of improved market outcomes for consumers with direct reference to lowering costs to industry participants, thus providing shared benefits to both businesses and consumers. This approach focuses on the efficiency and effectiveness of self-regulatory structures.

We have consulted widely with industry, consumer and government groups to ensure the draft report broadly reflects self-regulatory practice in Australia.

All the members of the Taskforce are firmly of the view that good practice in self-regulation involves applying an appropriate scheme to a specific market failure or social policy objective. There is simply no one 'model' for self-regulation. Specific market problems and objectives need to be clearly defined and then the focus can properly shift to choosing the most appropriate model of self-regulation to achieve the desired outcome.

Our draft report does, however, identify common characteristics of successful schemes.

In terms of the specific matters we were asked to examine in our Terms of Reference, the Taskforce found that there was a broad level of agreement around Australia on key issues.

Why self-regulate?

There are different reasons for establishing self-regulatory schemes. Industries may self-regulate to improve the image of suppliers or to promote consumer confidence in new products or technologies. Industries may also self-regulate to avoid regulation, satisfy legislative requirements or minimise costly litigation.

Industry has an array of self-regulatory options available to address specific problems and objectives, including codes of conduct, industry service charters, guidelines and standards, as well as industry-based accreditation and complaint handling schemes.

Gaps and overlaps?

Self-regulatory schemes operate in dynamic markets, which are influenced by globalisation, increasing vertical integration, and the growth of 'hybrid' products that span traditional markets or industries. As a consequence, gaps and overlaps can emerge in the coverage of various products, services, sectors and industries. Similarly, existing self-regulatory schemes may find themselves covering the same ground where the distinction between products or services has become blurred.

It is undesirable that there be market problems that are not addressed by industry self-regulation, as consumers may find it costly and time consuming to obtain redress through the Courts. It is equally undesirable that there be inefficient duplication of self-regulatory schemes. The Taskforce is confident that self-regulation is sufficiently flexible to respond quickly to new market issues.

Market conditions conducive to self-regulation?

Self-regulation is not the answer to every market failure and all social policy objectives. The Taskforce was asked to provide some guidance for industry and policymakers as to where self-regulation is likely to prove most effective.

There is a general recognition that industry self-regulation is often more flexible and less costly for both business and consumers than direct government involvement. However, it is necessary to ensure that self-regulation is the appropriate form of intervention given the particular industry environment and market circumstances.

The circumstances where self-regulation is likely to be most effective will depend on the nature and extent of market failure, the market structure, industry and consumer interests. For example, the Taskforce found, among other factors, that self-regulation is likely to be most effective where:

- there are clearly defined problems but no high risk of serious or widespread harm to consumers;
- there is an industry environment with an active industry association and/or industry cohesiveness;
- a competitive market is evident; and/or
- there are strong incentives for industry participants to initiate and comply with self-regulation.

What is ‘effective’ self-regulation?

There is no single ‘best practice’ model for self-regulation because a successful model needs to be designed to address particular problems identified in the context of particular market circumstances. Accordingly, the Taskforce considered it inappropriate to develop a ‘checklist’ of features of good self-regulation. Nonetheless, it is possible to identify critical elements that, individually or collectively, have underpinned effective schemes.

Good practice in self-regulation can be understood as improving market outcomes for consumers at the lowest cost to businesses. The following factors were seen as contributing to good practice:

- Consultation with stakeholders;
- Coverage and publicity;
- Administration;
- Dispute procedures and sanctions; and
- Monitoring and reviewing.

Government and consumer involvement in developing and promoting self-regulation?

There are a various options for designing and promoting self-regulatory schemes. What works for one industry may not work for another. It follows that the ‘mix’ of industry, government and consumer involvement that works well for one self-regulatory scheme may be inappropriate for another.

Experience has shown that industry will initiate a self-regulatory scheme in response to a clear commercial imperative to win consumer confidence and boost sales. However, industry may also promote self-regulation as an alternative to government regulation where there is perceived to be a serious market failure or important social policy objective.

On the other hand, government involvement in self-regulation is justified when there is a public policy objective that would otherwise call for a regulatory response. The degree of government involvement will depend on the significance of the market failure or social policy objective being addressed and the consequences of self-regulation proving ineffective. Government can also assist in integrating schemes into the regulatory framework and is uniquely placed to promote international cooperation and harmonisation of self-regulatory initiatives.

Consumer input is also important in the development and in maintaining the relevance of self-regulation. Consumer advocates can promote consumer confidence in self-regulatory schemes.

Overall, code administration authorities established by industry should take responsibility for the monitoring and review of self-regulation, in consultation with government and consumer groups.

Is there potential to harmonise dispute resolution schemes?

Effective dispute resolution is a crucial element of industry self-regulation offering redress to consumers and it can also identify systemic problems in the industry. Dispute resolution schemes are an excellent monitoring tool increasing performance and industry standards.

In the future dispute resolution schemes may operate across different sectors with similar products/services, driven by changes in technology and market circumstances. Harmonisation of schemes would be less costly and less confusing for consumers and the use of umbrella-type arrangements with a single co-ordinated access point would likewise be of assistance to consumers.

Learning from international experience?

Self-regulatory policy has been promoted by the OECD as an alternative to formal regulation and is being embraced by member countries at different rates. Countries such as Australia, Canada and the United Kingdom have actively promoted effective industry self-regulation, with governments in each of these countries researching and reviewing best self-regulatory practice. However, in general it is apparent that self-regulation is becoming an accepted form of government regulatory policy as the advantages are beneficial to all stakeholders.

It must also be recognised that industry will often take the lead in developing and implementing self-regulatory practices internationally. Indeed, the actions of one industry may act as a catalyst for similar industries in other countries to follow suit. For example, the Canadian Chemical Producers' Association introduced Responsible Care® in 1985 and it has since become a global alliance with over 40 countries participating in the self-regulatory scheme. Similarly, the International Organisation for Standardisation (ISO), on which Australia is represented by Standards Australia, is a non-governmental, worldwide federation of national standards bodies from 130 countries that formulates and implements internationally agreed voluntary standards across a variety of goods and services.