



Australian
Competition &
Consumer
Commission

Guidelines for developing effective voluntary industry codes of conduct



July 2011

A large, light blue, stylized letter 'C' is centered on the page. To its left is a vertical white bar. The background is a solid teal color.

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effective voluntary industry
codes of conduct

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Important notice

This guideline is designed to give you basic information; it does not cover the whole of the *Competition and Consumer Act 2010* and is not a substitute for professional advice.

Moreover, because it avoids legal language wherever possible there may be generalisations about the application of the Act. Some of the provisions referred to have exceptions or important qualifications. In most cases the particular circumstances of the conduct need to be taken into account when determining how the Act applies to that conduct.

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1

INTRODUCTION

Introduction

Foreword

The Australian Competition and Consumer Commission's *Guidelines for developing effective voluntary industry codes of conduct* are designed to help industries improve voluntary compliance with the *Competition and Consumer Act 2010*. The ACCC has considerable experience in the use of codes of conduct to regulate market behaviour.

The guidelines are based on this experience coupled with consultations held with industry and consumer organisations.

Various regulatory frameworks may achieve effective compliance with the Act—the choice depends on a number of factors. Some of these factors are identified in these guidelines and should be considered before deciding to proceed with developing a voluntary industry code of conduct.

The ACCC encourages businesses to only develop codes that will deliver effective compliance with the Act. Effective codes potentially deliver increased consumer protection and reduced regulatory burdens for business. To achieve this they must be well designed, effectively implemented and properly enforced. In contrast ineffective codes may place compliance burdens on business without any realisable benefits and potentially making signatories to it less competitive.

What is a voluntary industry code of conduct?

A voluntary industry code of conduct sets out specific standards of conduct for an industry in relation to the manner in which it deals with its members as well as its customers. These standards are voluntarily agreed to by its signatories.

The ACCC's role

The ACCC's role with codes of conduct has developed over the years from providing guidance to industry associations to participating as an observer on code administration committees. That role includes granting authorisation for certain conduct on public benefit grounds and the administration of mandatory industry codes of conduct, for example the Franchising Code of Conduct.

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WHY COMPLY?

Why develop and comply with effective voluntary industry codes

There are significant benefits in developing and complying with voluntary industry codes.

Some of these benefits include, but are not limited to:

- greater transparency of the industry to which signatories to the code belong
- greater stakeholder or investor confidence in the industry/business
- ensuring compliance with the Act to significantly minimise breaches¹
- a competitive marketing advantage.

Other reasons for developing a voluntary industry code include:

- it is more flexible than government legislation and can be amended more efficiently to keep abreast of changes in industries' needs
- it is less intrusive than government regulation
- industry participants have a greater sense of ownership of the code leading to a stronger commitment to comply with the Act
- the code acts as a quality control within an industry
- complaint handling procedures under the code are generally more cost effective, time efficient and user friendly in resolving complaints than government bodies.

1. Breaches of the Act may lead to:

- significant financial penalties and/or legal costs
- a shift in management focus from growing the business to protecting it and oneself from prosecution
- a loss of reputation.

When are voluntary industry codes more likely to be effective?

Research conducted on behalf of the ACCC suggests that codes of conduct tend to be more effective when the self-regulatory body:

- has widespread support of industry
- comprises representatives of the key stakeholders, including consumers, consumer associations, the government and other community groups
- operates an effective system of complaints handling.

Choosing the appropriate tool

What factors should be considered in deciding whether a voluntary industry code would be the most appropriate tool to achieve effective compliance with the Act?

To choose the appropriate tool many criteria need to be considered including:

- the issue being addressed
- the nature of the industry (e.g. is it a service industry or product industry? Is it an emerging industry or mature industry?)
- the size and structure of the industry or sector for which the code is proposed
- other industry circumstances such as the geographic spread and cohesiveness of the industry
- the history of the industry in relation to the conduct or objective the code is aiming to address
- an assessment of the current degree of confidence, trust or credibility the industry has with the community and consumers
- an assessment of whether a particular regulatory arrangement could deliver the identified objectives, depending on the likely consumer or community confidence
- identifying those features of a particular regulatory model that will inspire community and consumer confidence in it, and ensuring they are integral to the model's adoption and implementation.

Whichever of the above tools are adopted, they should be the minimum necessary to achieve the identified objectives, in a manner which imposes the least cost of compliance to achieve them.

PRACTICAL STEPS

3 Practical steps to take before drafting and effective code

There are several important steps an industry should take before drafting or reviewing an industry code of conduct.

These include:

- familiarising itself with this entire guideline
- identifying and consulting with the relevant stakeholder groups within the industry, consumer affairs agencies and relevant user, consumer and public interest groups—this will assist in identifying and gaining an understanding of the problems that the code should address
- forming a code development committee to clearly define the objectives that the code needs to achieve and identify:
 - the issues the code should address and reach a consensus on those issues
 - the benefits of the code to stakeholders
 - the rules necessary to achieve the objectives
 - the costs of administering the code
 - how this cost is going to be funded
 - the resources available to develop an effective code.

Once the above issues have been settled the next step is drafting the code. It is important that it contains all the essential criteria for effective codes. Once the code development committee has agreed on the initial draft it should be road-tested by the ultimate users of the code, the stakeholders. It may be necessary to have several redrafts after comments from stakeholders are considered.

A high level of involvement of stakeholders will encourage a high level of code ownership and coverage. The greater the involvement of industry stakeholders with the industry code, the greater the likelihood of it achieving its objectives.

4 Drafting an effective voluntary industry code of conduct

DRAFTING

When drafting an industry code it is important to consider its structure. The final content of a particular code will depend on the nature of the problem it is designed to address and the industry involved. A drafting checklist outlining the critical steps in drafting the code is attached at appendix 2.

The following outline will provide a useful guide.

Part one—purpose of the code

The code must include:

- **Objectives**—clearly spelled out objectives help explain to stakeholders and any interested party why the code was established and what it intends to achieve. A clear statement of objectives can be written in such a way that it is measurable. This means that when the code is reviewed its success or failure can be accurately assessed.
- **Definitions**—clearly written definitions help explain technical and legal terms.

While the code should be consistent with the law, it should be easy for stakeholders to understand their rights and obligations. Using plain English will prevent ambiguity and vagueness and will instil confidence and certainty.

Part two—code rules

This part identifies the rules necessary to achieve the objectives. They should be developed keeping in mind the issues that were identified. Below is a hypothetical example.

example

An Australian Diamond code of conduct designed to address the authenticity of Australian diamonds may develop rules addressing the following:

- accuracy of record keeping by all stakeholders
- a means for consumers to check authenticity
- detailed customer receipts
- correction of errors—outlining steps taken by a retailer when an error is identified
- full refund policy
- audit trail—allowing an error to be traced from its origin to when and how it was or was not corrected.

Code rules provide signatories with industry standards that have been set by industry and may establish best practice. Code rules also inform interested parties of their rights and obligations under the code, the quality and service they can expect and how to lodge a complaint when they are dissatisfied with the product or service they received.

Part three—code administration criteria

To ensure the rules are applied effectively in practice it is necessary for the code's promoters to develop and implement an administrative mechanism.

Code administration

A code administration committee needs to be established and its operations written into the code document. That committee should ensure the successful implementation and ongoing effectiveness of the code.

The code administration committee needs to have representatives of all stakeholder groups and, where appropriate, complaints handling strategies in place. Such representation provides transparency to the scheme by providing a ‘public window’ into its operations.

Typical stakeholders include:

Trade associations

Historically, trade associations as caretakers of industry members have taken an active part in developing and maintaining codes of conduct and generally are able to incorporate into their existing infrastructure a code administration committee.

Consumer representatives

Consumers play an important role in the development of business to consumer codes, code administration and consumer dispute resolution schemes. They will help ensure the code is more robust in terms of consumer protection and more likely to be accepted by stakeholders.

It is therefore important to ensure that consumer representatives possess specific skills that extend beyond an individual’s own personal experience as a consumer.

They must be able to demonstrate that they are:

- capable of reflecting the viewpoints and concerns of consumers
- people in whom consumers and consumer organisations have confidence.

In appointing a consumer representative to participate in a code development, administration committee or dispute resolution scheme the following principles should be taken into consideration:²

- appointments must be made on merit and demonstrate the following:
 - expertise in consumer affairs
 - links to relevant consumer organisations
 - capacity and willingness to consult with relevant consumer organisations
 - knowledge of, or the ability to acquire knowledge of, the industry/issues involved in the appointment

2 *Principles for the appointment of consumer representatives: a process for government and industry—consultation draft*, Commonwealth Consumer Affairs Council, May 2002.

- appointees must be independent of industry or government
- consumer organisations must be involved in the appointments
- a wide range of candidates should be sought
- the appointment process must be consistent with good corporate governance and, where relevant, good practice in self-regulation
- the appointment process must be transparent, accountable and cost effective.

Regulatory authority and consumer affairs agencies

Regulatory agencies or consumer affairs agencies may sit on code development or administration committees if such expertise is needed.

The ACCC has had an observer role on a number of code administration committees. On other occasions the ACCC has helped code administration committees review the code's effectiveness.

Finally, the appointment of all code administration committee members should be for a prescribed period and those appointments be reviewed regularly to ensure the committee's continued effectiveness.

Coverage

The wider the coverage a code has in an industry, the more effective it will be. The level of coverage should be measured in terms of number of actual code signatories against potential signatories within the industry, as well as in terms of coverage of the issue that the code is attempting to address.

For example, if a code is aiming to correct a market failure issue caused by a minority group and the minority group does not become a signatory to the code, then the code is unlikely to achieve its objective.

Effective complaints handling

An effective code will incorporate the following:

- a definition of complaint that includes any expression of dissatisfaction with a product or service offered or provided
- a procedure whereby complaints should first be considered by signatories to the code

- if the signatories cannot resolve a complaint it should be lodged with the administration committee or an independent decision-maker appointed by the committee
- performance criteria for effective complaints handling—Standards Australia has developed a benchmark standard for effective complaints handling (AS4269) which may be revised from time to time.

Independent review of complaints handling decisions

The code should also provide for a review mechanism when a member of the public or an industry member is dissatisfied with an initial attempt to resolve the complaint.

This internal review mechanism may be offered by the industry association to attempt to conciliate the dispute. If all internal industry efforts fail to resolve the complaint then the industry should sponsor an independent complaint body to review it. This independent review body should:

- be recruited from outside the industry
- hold no preconceived ideas about the industry
- have tenure for a fixed period
- be suitably qualified to hear and resolve complaints.

By recruiting from outside the industry to hear complaints not only is justice being done but it is also being seen to be done. Associations exist for the benefit of their members at the exclusion of others. Therefore, they may not generally be seen as an acceptable independent body to review complaints.

Examples of independent complaints bodies include:

- an independent referee with conciliation powers or
- an industry ombudsman with power to make binding decisions or
- a committee composed of an independent chair, one or more industry members and consumers.

In-house compliance system

The code administration committee needs to ensure that each participant has some form of in-house system to ensure compliance with the code. It can also assist compliance at this level with advice and training. In Australia, code compliance manuals are being developed for codes based on the Australian standard on compliance programs (AS3806) which may be revised from time to time.

Sanctions for non-compliance

Commercially significant sanctions will be necessary to achieve credibility with and compliance by participants, and also engender stakeholder confidence in the industry code.

Examples of commercially significant sanctions may include:

- supplying an item free or any meaningful remedy to the aggrieved party when a code rule is broken
- censures and warnings
- corrective advertising
- fines
- expulsion as a signatory to the code
- expulsion from the industry association.

Sanctions should reflect the nature, seriousness and frequency of the breach.

Consumer awareness

An effective code should incorporate a strategy that will raise consumers' awareness of the code and its contents, including its complaints handling provisions.

A published list of code signatories may help raise code awareness.

Industry awareness

In many cases a code fails to operate effectively, not because its principles and procedures are inadequate, but because employees or industry members are either unaware of the code or fail to follow it in day-to-day dealings. It is therefore essential that the code contain a provision requiring employees and agents to be instructed in its principles and procedures. This is an ongoing task because of staff turnover in firms and should be overseen by the code administration body.

Data collection

Effective codes require collection of data about the origins and causes of complaints, and the identification of systemic and recurring problems which industry members need to address.

The type of data collected should include details of:

- complainant
- business complained about
- the type and frequency of complaint
- how the complaint was resolved
- time taken to deal with complaint
- type of sanction(s) imposed.

The data should be able to be analysed to produce reports that highlight any systemic issues and areas for potential improvement. These reports provide important feedback for management, staff and industry to continually improve compliance with the Act.

Monitoring

The code administration committee should regularly monitor codes for compliance to ensure the desired outcomes for all stakeholders and the community at large.

The committee should have a system for monitoring compliance which may include evaluating data collected regularly to identify and remedy problems as well as to identify ways of increasing compliance.

Accountability

The committee should also produce annual reports on the operation of the code, allowing for periodic assessment of its effectiveness. These reports should be readily available to all stakeholders and interested parties.

Review

The code should provide for regular reviews to ensure that the standards incorporated are meeting identified objectives and current community expectations and that it is working effectively.

Competition implications

Codes should not be written in an anti-competitive way. When a code includes potential anti-competitive provisions, authorisation should be obtained from the ACCC. For more information on authorisation, please refer to the ACCC website www.accc.gov.au.

Performance indicators

Performance indicators should be developed with reference to these criteria and implemented as a means of measuring the code's effectiveness.

The measurements may either be qualitative or quantitative but should be objective so that another person in similar circumstances would obtain the same measurement.

GETTING STARTED

5 Getting started

This chapter summarises the steps taken to develop a voluntary industry code.

The **1st step** is for the code development committee to consult with its stakeholders to assess the level of support for the proposed code.

The **2nd step** is to incorporate any relevant comments from stakeholders.

The **3rd step** is to launch the code within the industry.

The **4th step** is to closely monitor the implementation and operation of the code, including specified data collection and reporting. The committee should ensure that most industry stakeholders have subscribed to it and are abiding by it.

The **5th step** is to conduct the first annual review of the code to ensure that it is achieving its objectives or at the very least is showing clear indicators of achieving its objectives. The first review should take place after the first 12 months of the code's operation.

An example of an annual review report is attached at appendix 3.

The **6th step** is an independent review of codes to be conducted every three years. The code administration committee should budget for the cost of the audits.

The code should clearly set out how such a review is to occur. An example of a three-yearly review report is attached at appendix 4.

Important contact details

ACCC Infocentre 1300 302 502

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APPENDIXES

Getting started

1. Pre-drafting checklist

Necessary considerations before drafting the code

✓ if considered

- | | |
|---|--------------------------|
| Identify and consult with all stakeholder groups in the industry | <input type="checkbox"/> |
| Form a code development committee | <input type="checkbox"/> |
| Identify industry issues code needs to address | <input type="checkbox"/> |
| Identify the benefits of the code to industry stakeholders | <input type="checkbox"/> |
| Define the code objectives | <input type="checkbox"/> |
| Identify and articulate the rules necessary to achieve the objectives | <input type="checkbox"/> |
| Identify the costs of administering the code | <input type="checkbox"/> |
| Decide how this cost is going to be funded | <input type="checkbox"/> |
| Identify the resources available to you | <input type="checkbox"/> |

2. Drafting checklist—critical steps in drafting the code

✓ if considered

- | | |
|--|--------------------------|
| Objectives of the code need to reflect specific stakeholder/business concerns | <input type="checkbox"/> |
| Ensure that the framework and language is clear to all stakeholders | <input type="checkbox"/> |
| Set out the rules in the code that address common complaints and concerns about industry practices | <input type="checkbox"/> |
| Establish a code administration committee and its functions in the code | <input type="checkbox"/> |
| Include provisions for a complaints handling scheme in accordance with AS4269 | <input type="checkbox"/> |
| Incorporate in the code commercially significant sanctions for breaches of the code | <input type="checkbox"/> |
| Provide for an independent review mechanism for when a complainant is dissatisfied with an outcome | <input type="checkbox"/> |
| Incorporate mechanisms in the code that ensure consumer awareness | <input type="checkbox"/> |
| Incorporate mechanisms in the code that ensure industry awareness | <input type="checkbox"/> |
| Include provisions for relevant data collection | <input type="checkbox"/> |
| Specify a regular review process of the code | <input type="checkbox"/> |
| Avoid anti-competitive implications in the code | <input type="checkbox"/> |
| If anti-competitive implications are unavoidable seek ACCC authorisation | <input type="checkbox"/> |
| Incorporate performance indicators in the code | <input type="checkbox"/> |

3. Annual review report summary

(hypothetical example only)

1. **Name of the industry code:** Code of practice for authenticating Australian Diamonds
2. **List the code objectives and respective benchmarks mentioned in the code:**

Objectives	Benchmarks
a Retailer ensures diamonds marketed as Australian are genuinely Australian	a Consumer of Australian diamond can trace its origin to an Australian diamond mine
b Clear and uniform labelling of diamond	b Country of origin transparency
c Effective dispute resolution	c1 Accessibility c2 Independence c3 Fairness c4 Accountability c5 Efficiency c6 Effectiveness

3. **Using the respective benchmarks in Q2 above, please show evidence of the status of these code objectives:**

Benchmark	Status
a Consumer of Australian diamond can trace its origin to an Australian diamond mine	a 250 cases of non traceable diamonds reported
b Country of origin transparency	b 99 per cent of all subscribers are complying with the code requirements

3. Using the respective benchmarks in Q2 above, please show evidence of the status of these code objectives: (*continued*)

Benchmark	Status
c5 Efficiency	<p>c5.1 Has the code administration committee kept track of all the complaints? Yes</p> <p>c5.2 Have all the complaints been dealt with in accordance with the principles outlined in the code? Yes</p> <p>c5.3 Has the complaints handling procedure been reviewed regularly (i.e. at least annually)? Yes</p>
c6 Effectiveness	<p>c6 Is the complaints handling scheme in compliance with AS4269 (Australian Standard—Complaints Handling)? Yes</p>

3. How many diamond country of origin inquiries were received by diamond retailers?
1200
4. How many complaints were received by the code administration committee during the last 12 months?
250
5. How many complaints were satisfactorily resolved by the code administration committee during the last 12 months?
220
6. Are there procedures for referring relevant complaints to other more appropriate forums?
Yes, we referred 15 complaints to more appropriate forums.
7. Have any systemic issues that have become apparent from complaints been referred to relevant scheme members?
Yes

8. What were those systemic issues?

Issue 1: The diamond's origin could not be substantiated.

Issue 2: The paperwork supplied with the diamonds was not very easy to understand.

9. Are vexatious and frivolous complaints being excluded at the discretion of the decision-maker?

Yes

10. Are there reasonable time limits set for each process which facilitates speedy resolution without compromising quality decision-making?

Yes

11. Are these time limits adhered to?

Yes

12. Are the parties kept informed of the progress of their complaint?

Yes

13. How many complaints were referred to the National Jewellers Association for appropriate action?

10

14. What were the outcomes of the complaints referred to the National Jewellers Association?

1. Eight complaints were resolved with the retailer to the consumers' satisfaction.

2. Two complaints were withdrawn by the consumers.

4. Three-yearly review report summary

(example only)

To ensure that the code maintains the necessary standard, an independent³ review will be conducted every three years after it is implemented. This review is comprehensive and designed to retain the integrity of the code, meet consumer and business expectations and keep compliance costs to a minimum while maximising the benefits that flow from effective industry codes.

The three-yearly review will focus primarily on the effectiveness of the code in achieving its stated objectives.

This review is based on the assumption that the development stage and the consultative stage were carried out in accordance with the principles outlined in this guideline and therefore will not be revisited.

The primary criteria that the review should focus on are the agreed performance criteria outlined in the code.

These include but may not be limited to:

Code administration

Is a code administration committee established?

Are the functions of the committee clearly spelled out in the code?

Do the responsibilities of the committee include:

- monitoring and reporting on compliance
- obtaining adequate finance from members for administering the code
- ensuring publicity of the code
- providing for employee awareness of the code
- imposing agreed sanctions on members for breaches of the code
- conducting periodic reviews of the effectiveness of the code
- preparing annual and other reports on the operations of the code.

3 The auditor will qualify as independent on the basis that he or she:

- (i) is not a present or past staff member or director of the corporation
- (ii) has not acted or does not act for the corporation
- (iii) is not retained by the corporation in any other capacity, either currently or in the past
- (iv) has not and does not provide consultancy or other services for the corporation
- (v) has no shareholding or other interests in the corporation.

Transparency

Are all stakeholders represented on the code administration committee?

Coverage

How many industry stakeholders could potentially subscribe to the code?

How many have subscribed to the code to date?

Complaints handling

Accessibility

Is the complaints handling system easily accessible to stakeholders?

Independence

Is the decision-maker independent from the code members?

Is the decision-maker appointed to the complaints handling scheme for a fixed term?

Does the code administration body have enough funding to fulfil its responsibilities?

Fairness

Does the decision-maker base decisions on what is fair and reasonable, considering good industry practice, relevant industry codes of practice and the law?

Is the complainant advised of the rights to access the legal system or other redress mechanisms at any stage if they are dissatisfied with any of the scheme's decisions or the decision-maker's determination?

Can both parties put their case to the decision-maker?

Are both parties informed of the other parties' case/complaint?

Is either party given the opportunity to rebut the arguments or information provided by the other party?

Are both parties told the reason for any determination?

Can the decision-maker compel a complainant to provide information relevant to a complaint?

Is all information supplied by either party kept confidential except where disclosure is required by law?

Accountability

Does the code administration committee provide regular reports of determinations?

Do written reports name the parties involved?

Does the code administration body publish an annual report?

Is the annual report readily available to interested parties?

Efficiency

Does the complaints handling scheme only deal with complaints that are within its terms of reference?

Does the scheme only deal with disputes that have not been dealt with by another dispute resolution forum?

Does the scheme only deal with disputes that were not resolved through the internal dispute resolution mechanism?

Does the scheme allow the decision-maker to exclude vexatious and frivolous complaints?

Does the scheme allow reasonable time limits for each of its processes?

Is there a system in place that traces the progress of complaints?

Are the complainants informed of the progress of their complaints?

Does the scheme keep records of all complaints, inquiries, their progress and outcome?

Does the scheme conduct regular reviews of its performance?

Does the scheme feed back regularly to the code administration committee on its progress?

Effectiveness

Are the scope and power of the decision-maker clear?

Can the decision-maker make monetary awards (not punitive damages)?

Is there a clear mechanism for referring systemic problems to the administration committee?

Does the scheme have a procedure in place for receiving and referring complaints about the scheme?

Does the scheme have a mechanism in place for dealing with these recommendations quickly?

Does the scheme require code signatories to have an internal complaints mechanism in place?

Are the determinations of the decision-maker binding on the code signatory if the complainants accept the determination?

Has the operation of the code been reviewed within three years of its establishment by an independent body?

Is the scheme reviewed regularly thereafter by an independent entity?

Is the scope of the scheme appropriate?

Are complainants and scheme members satisfied with the scheme?

Are the dispute resolution processes used by the scheme just and reasonable?

Is access to the scheme fair and reasonable?

Is the scheme effective in its terms of reference?

Are the results of the review made available to relevant stakeholders?

In-house compliance

Does the code administration body ensure that signatories to the code have an in-house compliance program in place?

Does the in-house compliance program comply with AS3806?

Sanctions for non-compliance

Are the sanctions for non-compliance with the code commercially significant?

How many sanctions were imposed by the committee in the last three years?

What were the sanctions that were imposed?

Independent review of complaints handling

Can a dissatisfied complainant have the decision independently reviewed?

Consumer awareness

What was the initial consumer awareness of the code?

What is the consumer awareness now of the code?

What is the strategy to create ongoing consumer awareness of the code?

Is the level of consumer awareness reported annually?

Industry awareness

What was the initial industry awareness of the code?

What is the industry awareness now of the code?

What is the strategy to create ongoing industry awareness?

Is the level of industry awareness reported annually?

Data collection

How many complaints were received in the last three years?

(Please indicate by years 1, 2 and 3)

Is the data collected analysed and reported?

Is the data used to identify systemic problems?

Monitoring

How frequent is compliance with the code monitored?

Accountability

Was the operation of the code reported in an annual report?

Review

How many reviews were conducted within the last three years?

Are the review mechanisms adequate to assess the code's effectiveness?

Competitive implications

Is the code having a negative impact on competition?

Has the code been checked with the ACCC for possible anti-competitive implications?

Performance indicators

Have all of the following performance indicators been implemented?

- Is there a high level of industry awareness of the code?
- Is there a high level of stakeholder awareness of the code?
- Have stakeholder complaints dropped on issues the code is designed to address?
- Is the code meeting the stated objectives?
- Is the complaints handling mechanism highly visible?

- Is the complaints mechanism highly accessible?
- Are the response times to complaints resolution quick?
- Are the in-house code compliance mechanisms effective?

5. What does it mean to have a code prescribed under the Act?

This means that the government has prescribed an industry code of conduct under s. 51AE of the Act either as mandatory or voluntary and it is therefore enforceable under the Act.

A purpose of prescribing industry codes of conduct is to strengthen a voluntary code that has failed to meet its objectives.

The government has made it clear that the minister will only consider initiating a proposal for prescription of a code of conduct if:

- the code would remedy an identified market failure or promote a social policy objective
- the code would be the most effective means for remedying that market failure or promoting that policy objective
- the benefits of the code to the community as a whole would outweigh any costs
- there are significant and irremediable deficiencies in any existing self-regulatory regime—for example, the code scheme has inadequate industry coverage or the code itself fails to address industry problems
- a systemic enforcement issue exists because there is a history of breaches of any voluntary industry codes
- a range of self-regulatory options and ‘light-handed’ quasi regulatory options have been examined and demonstrated to be ineffective
- there is a need for national application as state and territory fair trading authorities in Australia also have the options of making codes mandatory in their own jurisdiction.

Furthermore the government will only consider prescribing a code of conduct under the Act if it is not already underpinned in other federal legislation. Examples of this would be the internet and the telecommunications industry. Both of these industries are underpinned by other legislation such as the *Broadcasting Services Act 1992* and the *Telecommunications Act 1997*, which provide for the registration and enforcement of industry codes by the Australian Communications Authority.

Further information on the authorisation process can be accessed from the ACCC’s website www.accc.gov.au.

ACCC

Contacting the ACCC

For all business and consumer enquiries:

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