## **TERMS OF REFERENCE**

On 29 June 2000 the Senate referred to the Senate Economics Reference Committee the matter of mass marketed tax effective schemes and investor protection for inquiry and report with particular attention to:

- i. The adequacy of measures to promote investor understanding of the financial and taxation implications of tax effective schemes;
- ii. The conduct of, and the adequacy of measures for controlling, tax effective scheme designers, promoters and financial advisers; and
- iii. The ATO's approach towards and role in relation to mass marketed tax effective schemes.

## TABLE OF CONTENTS

| Membershi    | p of the Committee  | iii  |
|--------------|---|------|
| Terms of R   | eference  | v    |
| Definitions  |   | ix   |
| Preface      |   | xi   |
| List of Reco | ommendations  | xiii |
| Chapter 1    | Managing Compliance Risks                                       | 1    |
|              | Introduction  | 1    |
|              | Current levels of deductions and compliance risk                | 1    |
|              | Promoter industry   | 5    |
|              | Targeting habitual tax avoiders                                 | 6    |
|              | ATO communications strategies: warning the market?              | 7    |
|              | Effective signalling?   | 8    |
|              | Early warning to the market and taxpayers                       | 9    |
|              | TaxPack warning   | 11   |
|              | Risk Management Strategy  | 12   |
| Chapter 2    | <b>Cultures and Compliance</b>                                  | 17   |
|              | Introduction  | 17   |
|              | Modelling compliance  | 17   |
|              | Culture of scheme participants                                  | 20   |
|              | Culture of taxation professionals                               | 24   |
|              | Professional response   | 25   |
| Chapter 3    | Self-Assessment, Certainty and Reasonably<br>Arguable Positions | 31   |
|              | Self-assessment and expert advice                               | 31   |
|              | ATO rulings   | 35   |
|              | Self-assessment   | 35   |
|              | Conformity with a ruling and the application of Part IVA        | 36   |
|              | Matters for consideration                                       | 37   |

|                 | Increasing taxpayer understanding of self-assessment                   | 37  |
|-----------------|--|-----|
|                 | Judicial resolution of differing interpretations of law                | 39  |
| Chapter 4       | <b>Investor Protection and Tax Effective Schemes</b>                   | 43  |
|                 | Introduction   | 43  |
|                 | A preliminary note – distinguishing financial from taxation protection | 43  |
|                 | Regulations governing schemes and conduct                              | 44  |
|                 | Scheme establishment and operation                                     | 44  |
|                 | Disclosure requirements  | 47  |
|                 | Quality of advice and sale of financial products                       | 50  |
|                 | Compliance and tax effective schemes                                   | 52  |
|                 | Fees and commissions   | 53  |
|                 | Projections and forecasts  | 56  |
| Minority Report |  |     |
| Statement b     | y Senator the Hon Peter Cook   | 91  |
| Appendix I      | List of Submissioins   | 93  |
| Appendix II     | Public Hearings and Witnesses  | 113 |