Australia, like a number of Western countries, continues to emphasise direct participation in rulemaking by the ‘targets of regulation’ in an attempt to find solutions to a variety of regulatory problems. However, permitting industry to engage in rulemaking, a task historically seen as the responsibility of the state, is a starting point that raises a ‘new set of questions’. One such question is whether the process of industry rulemaking and the rules that industry produces are ‘too responsive’ to those involved, such that the integrity of ‘law’ is undermined. This paper explores this question in the context of Part 6 of the Telecommunications Act 1997 (Cth), which permits ‘sections of the telecommunications industry’ to formulate and seek the registration of codes of practice dealing with a variety of matters, including consumer protection, with the Australian Communications and Media Authority (ACMA). It seeks to answer the question by posing a legal question – to what extent is Part 6 rulemaking procedurally and institutionally legitimate. This issue, one of a larger range of questions concerning the compatibility of Part 6 rulemaking with the values and principles of Australian law, centres on the conformity of Part 6 rulemaking with the procedural and institutional aspects of the rule of law. Drawing on the experience of the Communications Alliance (the Australian telecommunications sector’s ‘peak’ self-regulatory body) formulating codes of practice, this paper argues that while Part 6 rulemaking may push the boundaries of ‘traditional’ procedural and institutional legitimacy, it is nevertheless consistent with them in many (and perhaps surprising) ways.

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