

MEMORANDUM OF UNDERSTANDING

COLLABORATIVE COOPERATION

An arrangement for the collaborative working relationship between –

the **Australian Customs and Border Protection Service**

and

the **Department of Agriculture, Fisheries and Forestry**

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1 Purpose of this memorandum

- 1.1 This Memorandum of Understanding (**Memorandum**) is made between:
 - (a) the Australian Customs and Border Protection Service (**Customs and Border Protection**); and
 - (b) the Department of Agriculture, Fisheries and Forestry (**DAFF**).
- 1.2 As a principles-based document, the Memorandum sets out the overall framework within which Customs and Border Protection and DAFF will work together to provide a high level of collaboration, support and service to each other and to the Australian Government.
- 1.3 Customs and Border Protection and DAFF recognise that they are instruments of the Australian Government and as such strive to achieve the Australian Government's objectives efficiently and effectively. The cooperative and collaborative intent outlined in this Memorandum reflects the desire to achieve a whole-of-Government approach to border operations.
- 1.4 The purpose of this Memorandum is to:
 - (a) establish and support the collaborative working relationship between Customs and Border Protection and DAFF regarding their respective border protection and biosecurity functions;
 - (b) develop and strengthen practical cooperation in biosecurity border matters and other matters of mutual interest; and
 - (c) facilitate that relationship and cooperation by clarifying roles and responsibilities in areas of mutual interest.

2 ROLES

- 2.1 Customs and Border Protection ensures the safety and security of Australia, and protects Australia's commercial interests through border protection designed to detect and deter illegal movement of goods and people across the border. Relying on its intelligence led, risk-based border management model, Customs and Border Protection aims to facilitate legitimate trade and travel and, at the same time, collect border related revenue and trade statistics.
- 2.2 DAFF develops and implements policies and programs that ensure Australia's agricultural, fisheries, food and forestry industries remain competitive, profitable and sustainable. Biosecurity services provided by DAFF seek to manage biosecurity risk across the biosecurity continuum under a risk return approach underpinned by sound science, efficient and responsive operations, consistent service delivery and strong client relationships.

3 OBJECTIVES OF COOPERATION

- 3.1 Working together, Customs and Border Protection and DAFF seek to:
 - (a) support legitimate trade and travel and to protect the Australian community from a range of border risks; and
 - (b) ensure the effective and efficient use of both government and industry resources to facilitate trade and travel while protecting the border.

With individual responsibilities and functions contributing to a whole-of-Government approach to protecting the border, Customs and Border Protection and DAFF will work closely to manage biosecurity risks across the border continuum – domestic, at border, in the maritime zone and overseas.

- 3.2 The collaborative relationship is based on mutual respect, trust and a commitment to cooperating in the pursuit of common goals. With designated responsibilities and functions designed to protect Australia and its borders from a range of existing and potential threats, Customs and Border Protection and DAFF:
- (a) respect each other's different but complementary functions; and
 - (b) commit to act cooperatively and collaboratively to enhance the effectiveness of each other's activities.

4 SCOPE OF COOPERATION

- 4.1 Customs and Border Protection and DAFF agree to a high level of collaboration, support and service to each other and to the Australian Government and, in a spirit of mutual cooperation, afford reasonable assistance to each other in doing so. This commitment seeks to ensure border services are effective and efficient in managing the common border risks and interests.
- 4.2 Working together will achieve:
- (a) **community confidence:** creating efficient border services that are streamlined from the customer perspective with minimum intervention for compliant customers;
 - (b) **integration:** synchronised operations to create synergies that will maximise utility and provide value for money to the Australian Government, and achieve a flexible and networked border management;
 - (c) **capability maximisation:** sharing processes and resources to identify and respond to border risks and improve compliance;
 - (d) **coordination:** high level executive engagement to set key directions and priorities for joint activity and mutual improvement to services; and
 - (e) **global and regional partnerships:** management of cross border cargo and people movement activities within region and internationally.
- 4.3 To deliver on this, Customs and Border Protection and DAFF will develop shared approaches in, but not limited to, the following areas:
- (a) **risk management:** identifying and responding to areas of commonality (and differences) in relation to risk management, border risks and risk tolerances;
 - (b) **operations and compliance:** ensure adequate legislative powers which enable joint activities in the air cargo, sea cargo, air and sea passengers, air and sea crew, mail, offshore surveillance and response;
 - (c) **intelligence and information sharing:** supporting each agency's risk-based approach through sharing of relevant information and intelligence for targeting purposes;
 - (d) **funding:** an informed and collaborative approach to appropriate funding models;
 - (e) **information and communications technology (ICT):** identifying opportunities to share and leverage ICT solutions to support each agency's operations;

- (f) **people and property strategies:** identifying opportunities for greater coordination in relation to recruitment, workforce retention, training and development, housing, accommodation, etc; and
- (g) **joint communications:** developing and implementing strategies for both internal and external communications.

5 GOVERNANCE ARRANGEMENTS

- 5.1 For the purposes of ensuring that each agency can effectively carry out their respective roles, Customs and Border Protection and DAFF will engage in regular, high-level meetings. These Senior Executive level meetings will set and monitor the strategic direction and priorities for inter-agency activity.

6 COMMUNICATION STRATEGY AND MEDIA

COMMUNICATION STRATEGY

- 6.1 Where a matter involves issues of mutual interest, Customs and Border Protection and DAFF may develop an agreed set of protocols and guidelines to provide a common and consistent approach to any communication strategy used to communicate with internal and external stakeholders and parties. This may also include establishing arrangements to use and share resources where appropriate.

MEDIA

- 6.2 Customs and Border Protection and DAFF agree to collaborate on any media releases and communication with the media and third parties which involve issues of mutual interest or issues which concern the other.
- 6.3 Notwithstanding this clause, Customs and Border Protection and DAFF acknowledge that any cooperation with respect to the media remains subject to each agency's statutory obligations.

7 MINISTERIAL BRIEFS

- 7.1 Where a brief to a Minister involves a matter affecting both agencies, Customs and Border Protection and DAFF will discuss and determine whether it is appropriate to provide a joint brief to that Minister.
- 7.2 Each agency recognises the other's discretion to propose a joint or separate policy submission to Ministers.

8 LEGISLATIVE AND POLICY CHANGE

- 8.1 Customs and Border Protection and DAFF will consult each other on any proposed legislative and policy changes falling within their responsibility that may impact the other before seeking ministerial approval for the proposed legislative change. As appropriate, this primarily concerns legislative and policy changes affecting the legislation and regulations which are administered by

each agency.

- 8.2 Each agency will assist the other wherever possible in relation to the interpretation of legislation and internal policy requirements necessary for meeting obligations under this Memorandum.

9 FINANCIAL ARRANGEMENTS

- 9.1 Except where expressly otherwise provided for in this Memorandum or through a separate written agreement, each agency will bear their own costs in fulfilling their commitments under this Memorandum.

10 ANNEXES AND PROCEDURAL STATEMENTS

ANNEXES

- 10.1 Customs and Border Protection and DAFF may develop a set of Annexes to support this Memorandum. These Annexes will form part of the Memorandum when created in accordance with this clause.
- 10.2 Each Annex will:
- (a) relate to a mutually agreed issue; and
 - (b) set out an approach for the most effective working relationship required to manage each issue.
- 10.3 In accordance with this clause, an Annex:
- (a) is made under this Memorandum if it is signed by the Chief Executive Officer of Customs and Border Protection and the Secretary of DAFF or their delegates; and
 - (b) commences, unless otherwise specified, on:
 - (i) the date it is signed by both agencies; or
 - (ii) the date the last agency signs, where the agencies do not sign the Memorandum on the same day.
- 10.4 Once an Annex has been made, it may be modified or terminated by a written agreement signed by the Chief Executive Officer of Customs and Border Protection and the Secretary of DAFF or their delegates. Unless otherwise specified, a modification or termination:
- (a) takes effect from the date the last party signs the modification or termination; and
 - (b) has no effect unless endorsed in accordance with this clause.

PROCEDURAL MATERIAL

- 10.5 Each agency may develop its own consistent procedural material to detail the working procedures required to give practical effect to the Memorandum and each Annex.
- 10.6 Any procedural material must be consistent with the principles outlined in this Memorandum and any relevant Annexes.
- 10.7 As necessary, Customs and Border Protection and DAFF will consult each other on procedures that will be adopted to implement the Memorandum and Annexes. Where the creation or modification of any procedural material may affect the other agency, Customs and Border Protection and DAFF will discuss any concerns to allow for the efficient operation of both agencies.

11 INTELLECTUAL PROPERTY

- 11.1 Nothing in this Memorandum is intended to change or affect the ownership of intellectual property of either agency.
- 11.2 If, at any time, either Customs and Border Protection or DAFF seeks to enter a contractual or other agreement with a third party which could affect the intellectual property rights of either or both of them, then the agencies will consult with each other before doing so.

12 OFFICIAL DISCLOSURE AND CONFIDENTIALITY

- 12.1 Customs and Border Protection and DAFF agree to:
 - (a) share relevant information in areas of mutual interest; and
 - (b) consider any requests for information and consult one another where needed.
- 12.2 Customs and Border Protection and DAFF acknowledge the need to provide appropriate protection and ensure that material is not subject to unauthorised access, interference, use, loss or disclosure at any time.
- 12.3 Each agency will comply with Commonwealth legislative and policy requirements in relation to official disclosure, secrecy and confidentiality and ensure their officers, employees, consultants and contractors are fully aware of their obligations.
- 12.4 Once an agency has received information or intelligence obtained under this Memorandum, that information or intelligence must be:
 - (a) handled in accordance with the security handling procedures of the disseminating agency; and
 - (b) accorded protection from misuse or wrongful disclosure and used only for the purpose for which it was provided or a related purpose.
- 12.5 Customs and Border Protection disclosure of protected information to DAFF is subject to arrangements under section 16 of the *Customs Administration Act 1985*. DAFF undertakes to use or disclose such information for the same or a related purpose for which it was provided by Customs and Border Protection under that legislation or when authorised by law to do so.

13 DISPUTE RESOLUTION

- 13.1 Customs and Border Protection and DAFF recognise that it is in their mutual interest to express issues of concern to each other in a professional manner as a method of improving cooperation between them.
- 13.2 Despite the existence of a dispute, Customs and Border Protection and DAFF will continue to perform their roles under this Memorandum unless requested not to do so by the other agency.
- 13.3 The resolution of disputes arising under this Memorandum or the Annexes will be based on the following principles:
- (a) the agencies will initially seek to resolve a dispute within the functional areas of the agencies in which the dispute arose; and
 - (b) each agency will ensure it has appropriate mechanisms in place:
 - (i) for raising a dispute to higher levels of management in the event that the dispute is not resolved by the functional areas; and
 - (ii) to disseminate information regarding resolution of disputes to other areas in the organisation who would benefit from such information.
- 13.4 If discussions undertaken by functional areas and higher levels of management fail to resolve the dispute, the dispute will be referred to the Chief Executive Officer of Customs and Border Protection and the Secretary of DAFF for further direction or final resolution.
- 13.5 Disputes will not be referred to any third party or tribunal.

14 DELEGATIONS

- 14.1 The Chief Executive Officer of Customs and Border Protection may:
- (a) sign this Memorandum on behalf of Customs and Border Protection or may appoint a delegate to do so; and
 - (b) either generally or otherwise, authorise a person to exercise all or any of his or her powers and functions under this Memorandum, except the power given in this paragraph.
- 14.2 The Secretary of DAFF may:
- (a) sign this Memorandum on behalf of DAFF or may appoint a delegate to do so; and
 - (b) either generally or otherwise, authorise a person to exercise all or any of his or her powers and functions under this Memorandum, except the power given in this paragraph.

15 COMMENCEMENT, DURATION AND TERMINATION

COMMENCEMENT

- 15.1 This Memorandum commences on:
- (a) the date it is signed by both agencies; or
 - (b) the date the last agency signs, where the agencies do not sign the Memorandum on the same day.

DURATION

15.2 This Memorandum remains in force until it is terminated in accordance with this clause.

TERMINATION

15.3 This Memorandum or any Annex may be terminated at any time.

15.4 Termination of this Memorandum or any Annex requires at least three (3) months written notice of an intention to terminate or such other notice as agreed.

15.5 Any termination may only occur by the Chief Executive Officer of Customs and Border Protection or the Secretary of DAFF.

15.6 Where this Memorandum is terminated:

- (a) all Annexes made under it will also cease to have any effect unless it is mutually agreed to retain particular Annexes;
- (b) any joint cooperation activities already commenced prior to termination of this Memorandum will continue subject to the provisions of this Memorandum until that activity has been completed; and
- (c) the provisions of this Memorandum concerning costs, security and confidentiality and the settlement of disputes will continue in effect notwithstanding the termination of this Memorandum.

16 VARIATION

16.1 Both agencies acknowledge the importance of ensuring the Memorandum remains relevant to their needs and aspirations. As such, Customs and Border Protection and DAFF will consult one another with the aim of making arrangements for the continuing and effective implementation of this Memorandum considering possible variations of this Memorandum as circumstances require.

16.2 Where Customs and Border Protection and DAFF mutually determine to vary this Memorandum, any variation will:

- (a) be made jointly by the Chief Executive Officer of Customs and Border Protection and the Secretary of DAFF or their delegates; and
- (b) be made by agreement in writing; and
- (c) will take effect as specified in clause 16.3.

16.3 Unless otherwise stated, a variation to this Memorandum commences on:

- (a) the date it is signed by both agencies; or
- (b) the date the last agency signs, where the agencies do not sign the variation on the same day.

17 REVIEWS

17.1 Customs and Border Protection and DAFF will review this Memorandum every two (2) years from the date on which it commences or within such other period as mutually determined.

18 STATUS AND INTERPRETATION

STATUS

- 18.1 This Memorandum is administrative in nature and does not intend to create, maintain or govern legal relations or obligations between the agencies. The obligations arising under legislation for each agency are not affected by this Memorandum.
- 18.2 Unless otherwise agreed in writing, any previous Memoranda of Understanding or agreements entered into by Customs and Border Protection and DAFF (or any organisations or entities under DAFF's control or administration):
- (a) will cease to have effect six (6) months following commencement of this Memorandum; and
 - (b) may be redeveloped into an Annex under this Memorandum.
- 18.3 Any previous agreements between Customs and Border Protection and DAFF which include other Departments or agencies as parties (i.e. a multi-agency agreement) are not revoked, varied or replaced and remain in effect.
- 18.4 Each agency will ensure that its employees, contractors and all other entities that act on its behalf will comply with the requirements established by this Memorandum and Annexes made in accordance with it.

DEFINITIONS

- 18.5 Unless the contrary intention appears, a term used in this Memorandum has the meaning shown in the table below:

Annex	means an Annex made in accordance with this Memorandum.
Commonwealth	means the Commonwealth of Australia.
Confidential Information	<p>means information that:</p> <ul style="list-style-type: none"> (a) has a national security classification; (b) is by its nature confidential; (c) is designated as confidential; or (d) the recipient knows or ought reasonably to know is confidential; <p>but</p> <p>does not include information which is or becomes public knowledge other than by breach of the law.</p>
Existing material	means Material in existence at the commencement of this Memorandum.
Information	means data, whether or not processed or analysed, and documents, reports, and other communications in any format, including electronic, or certified or authenticated copies of such data.
Intellectual property	includes all rights in copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, registered and unregistered trade marks, designs and

	<p>circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields and any right to registration of such rights existing in Australia or elsewhere, whether created before, on or after commencement of this Memorandum.</p>
Intelligence	<p>means the product of the collection, evaluation, collation, analysis and/or interpretation of information.</p>
Material	<p>with respect to Intellectual Property, includes information and the subject matter of any category of Intellectual Property rights.</p>
Memorandum	<p>means this Memorandum of Understanding on the collaborative working relationship between the Australian Customs and Border Protection Service and the Department of Agriculture, Fisheries and Forestry.</p>
Modification	<p>means modification includes amendments, deletions or other changes.</p>
Procedural Material	<p>includes Standard Operating Procedures, Instructions and Guidelines or Business Practice Statements or any procedural material made in accordance with this Memorandum.</p>

19 SIGNATURES


SIGNED at Canberra)
for and on behalf of the)
Australian Customs and Border)
Protection Service by)

Michael Carmody AO
Chief Executive Officer on


signature
21 July 2011
date

SIGNED at Canberra)
for and on behalf of the)
Department of Agriculture,)
Fisheries and Forestry by)

Dr Conall O'Connell
Secretary on


signature
21 July 2011
date