



**Australian Government**

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**Australian Quarantine and Inspection Service**

# **IMPORT CLEARANCE COMPLIANCE AGREEMENT MODEL**

## **INDUSTRY GUIDE**

**February 2005**

## INTRODUCTION

The Quarantine and Exports Advisory Council Co-Regulation, Quality Assurance and Third Party Policy Sub-Group has defined Co-Regulation as “*the concept of industry involvement in traditional AQIS regulatory activities, both import and export, with Compliance Agreements (including arrangements such as Quality Assurance) being the mechanisms for managing these arrangements between AQIS and industry*”.

Section 66B of the *Quarantine Act 1908* (as amended) and Section 35A of the *Imported Food Control Act 1992* (as amended) provides for the adoption of Compliance Agreements relevant to certain quarantine activities governed by these Acts. The Compliance Agreement is a legally binding agreement between AQIS/the Commonwealth and an industry party (Other Party), which requires the Other Party to perform specific tasks in an agreed manner.

In order to ensure that Compliance Agreements operate in a nationally consistent manner, and in accordance with the provisions of each of the Acts under which AQIS performs its regulatory responsibilities, the Import Clearance Compliance Agreement Model has been developed to outline uniform legal and administrative arrangements that all Compliance Agreements will operate under. This model encompasses the AQIS Model for Co-Regulation as well as the administrative processes that underpin the development and ongoing maintenance of Compliance Agreements. The various elements that comprise the Import Clearance Compliance Agreement Model are described below.

### 1. THE MODEL

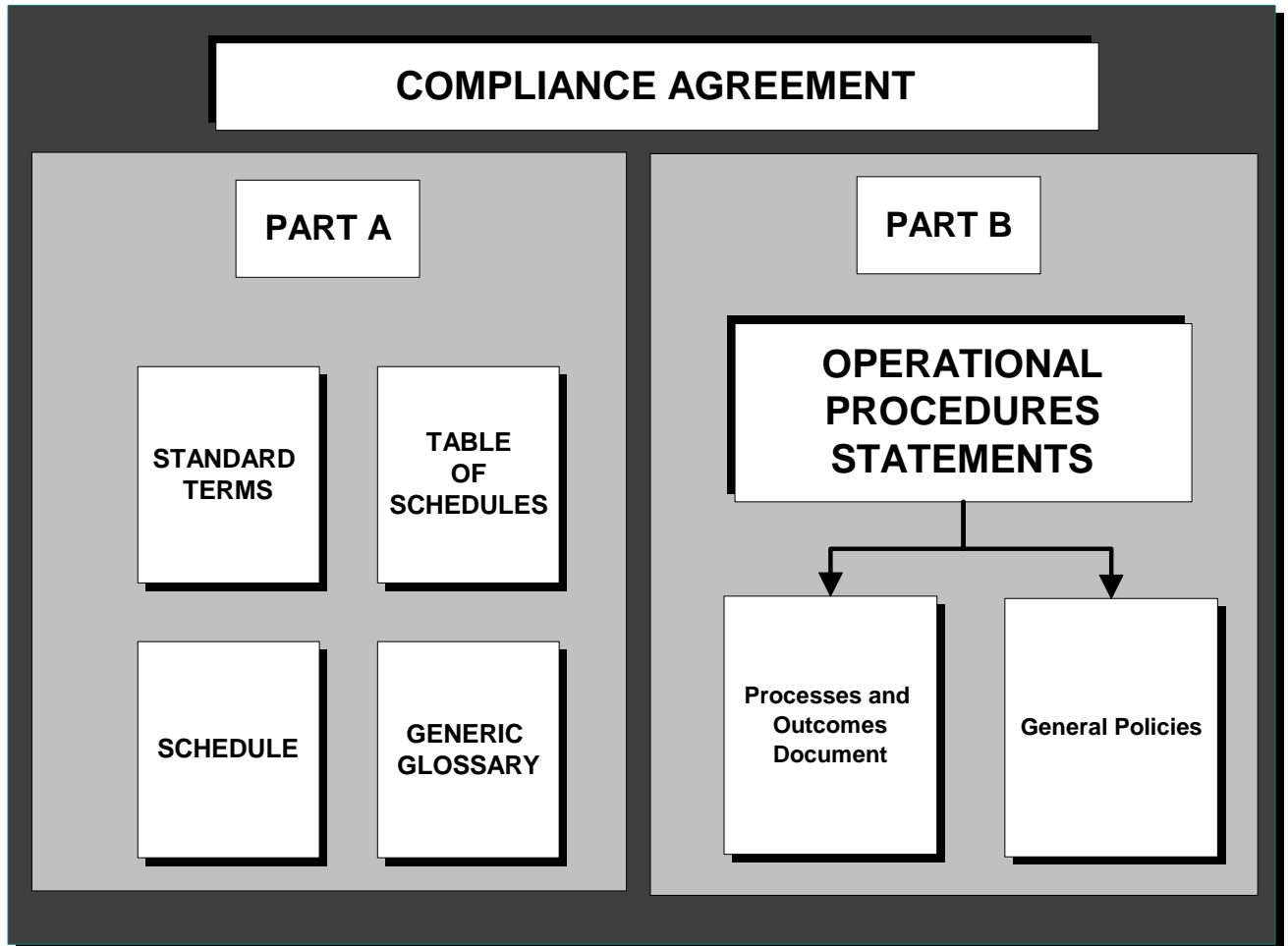
In order for the Co-Regulation concept to be realised, the Import Clearance Compliance Agreement Model has been developed to reflect how the legal, operational and administrative arrangements required to underpin co-regulatory initiatives are achieved.

The two fundamental elements that make up the Import Clearance Compliance Agreement Model are:

- (i) Part A, which provide the legal basis upon which co-regulatory initiatives operate to meet the provisions of the relevant legislation. Breaches of requirements detailed within the Compliance Agreement are offences and may lead to the termination of the Compliance Agreement and be **prosecuted** under the relevant governing legislation.
- (ii) **Part B**, which cover operational and administrative arrangements to ensure AQIS and the Other Party meet the requirements imposed under Compliance Agreements. Initial breaches of responsibilities detailed under Operational Procedures Statements will be addressed through administrative sanctions under the agreed General Policies within the Operational Procedures Statements, but more serious breaches may be dealt with under the Standard Terms of the Compliance Agreement.

***Neither part of the Compliance Agreement can operate in isolation.***

The various components of the Import Clearance Compliance Agreement Model are represented below.



## 2. Part A

Part A includes the Standard Terms, the Table of Schedules, Schedule and Generic Glossary, and provides the legal mechanism to cover co-regulatory activities undertaken by industry (the Other Party) and AQIS. Industry parties who voluntarily enter into a Compliance Agreement are subject to the legal provisions of the Agreement and, as such, may be prosecuted under AQIS legislation for breaches of requirements imposed under the Agreement.

Part A is made up of four components:

- (i) A set of **Standard Terms** that detail how the Compliance Agreement is to operate in accordance with its governing legislation. This document outlines the various minimum requirements for operating a Compliance Agreement, including provisions for:
  - defining the scope of the Agreement;
  - cancellation, suspension or varying of the Agreement;
  - the general effects of suspension, cancellation or cessation of the Agreement;
  - requirements for notification of particular events in respect to operating the Agreement;

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- policy undertakings by the Australian Government in respect to operating the Agreement.

*Note: Standard Terms are specific to each Act under which the particular Compliance Agreement operates.*

- (ii) A **Schedule** that details the legally binding *outcomes and requirements* to be achieved by the Other Party under the terms of the Compliance Agreement. Each Schedule contains a mandatory requirement for the Other Party to follow a set of Operational Procedures Statements which detail the *procedures and operational outcomes* that the Other Party must meet to achieve the outcomes and requirements of the Schedule.

Examples of the provisions outlined within a Schedule include:

- the purpose of the Schedule
- the scope of activities covered by the Schedule;
- prerequisites of the Schedule;
- outcomes and requirements the Other Party must meet;
- details on how AQIS will monitor the performance of the Other Party and how the administrative sanctions under the General Policies of the Operational Procedures Statements will be applied.

***In essence, each Schedule and its relevant Operational Procedures Statements provide the working documents and “rules” that cover activities under Compliance Agreements.***

*Note: A Compliance Agreement may contain a number of Schedules and Operational Procedures Statements covering different activities.*

- (iii) A **Table of Schedules** that provides an index of each Schedule and its associated Operational Procedures Statements operating under the Compliance Agreement at any point in time.
- (iv) A **Generic Glossary** that contains words and phrases that have special meaning within the context of an Import Clearance Compliance Agreement or the Scheme(s).

### 3. Part B

Part B of a Compliance Agreement is made up of the Operational Procedures Statements. As detailed under Section 2, each Schedule makes reference to its own set of Operational Procedures Statements without which the outcomes and requirements of that Schedule cannot be met. Each set of Operational Procedures Statements is comprised of the following:

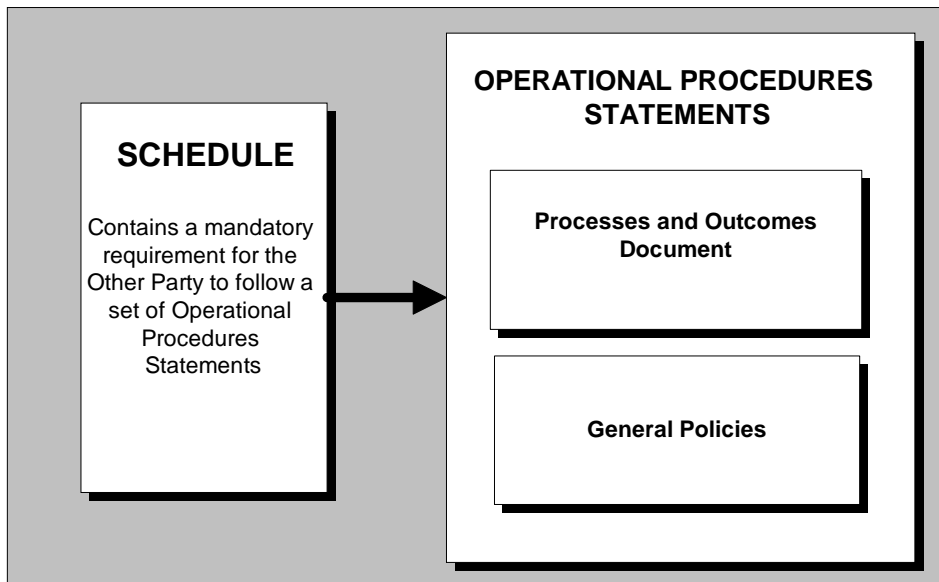
- (i) A **Processes and Outcomes Document**, which details the operational outcomes the Other Party must meet and the specific work procedures and activities that the Other Party must perform in order to meet the outcomes and requirements in the Schedule.
- (ii) A **General Policies Document**, which explains how AQIS will monitor and test the performance of the Other Party, apply administrative sanctions where poor performance is detected, receive appeals from the Other Party regarding the application of sanctions, and perform reviews of the Schedule and Operational Procedures Statements.

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The following policies are contained within the General Policies Document and will be applied consistently to all Schemes:

- a) An **Audit Policy** which details the methods adopted by AQIS to measure the Other Party's compliance with the procedures in the Processes and Outcomes Document.
- b) A **Compliance Policy** which details methods adopted by AQIS, after the detection of non-compliance, to ensure the Other Party re-establishes compliance with the procedures outlined in the Processes and Outcomes Document.
- c) An **Appeals Policy** which details the avenues available to the Other Party to settle disputes over any decision made by AQIS under the Compliance Policy.
- d) A **Review Policy** which details the process for the review and renewal of the Schedule.

The diagram below illustrates the link between the Schedule and the Operational Procedures Statements.



#### 4. MULTIPLE SCHEMES

Due to the large range of Quarantine activities that are now available for industry to perform under a Compliance Agreement, an Other Party will have the ability, in accordance with the Standard Terms of a Compliance Agreement, to enter into multiple Schemes under the one Agreement.

When an Other Party first signs onto a Scheme it will receive the full suite of Compliance Agreement documents, which include:

- Standard Terms;
- Table of Schedules;
- Schedule;
- Generic Glossary
- Operational Procedures Statements
  - Processes and Outcomes Document
  - General Policies

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A number of these documents consist of core information that remains consistent throughout the various Schemes. These **Core Documents** are issued to the Other Party when it signs onto a Scheme and are only issued once. The Core Documents of a Compliance Agreement consist of:

- Standard Terms
- General Policies
- Generic Glossary.

When an Other Party signs onto a new Scheme that is in addition to an existing Scheme it will be issued with **Scheme Specific Documents**. These documents contain details that are only relevant to the particular Scheme and consist of:

- Table of Schedules (this document is revised to reflect the Schemes the industry party is signed onto);
- Schedule;
- Processes and Outcomes Document.

The diagram below illustrates how documents are distributed to Other Parties participating in multiple Schemes under the one Compliance Agreement.

