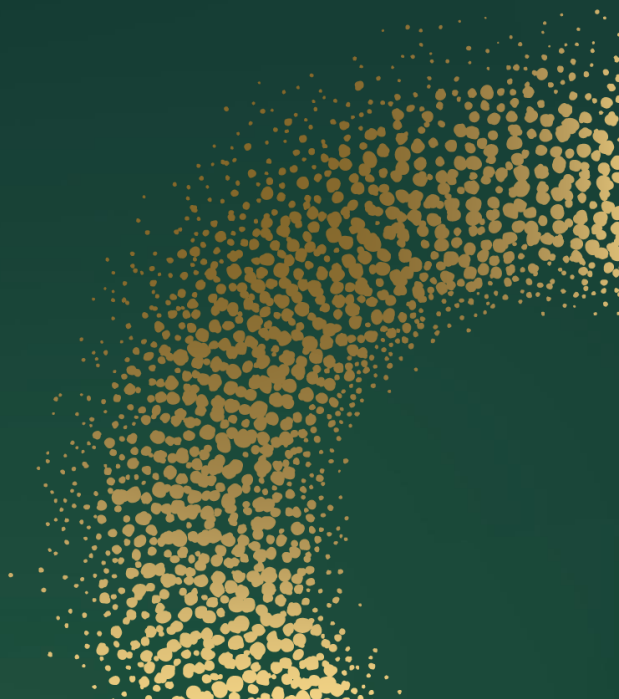
Australian Government

Border Controls Whole-of-Government Policy Framework

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Introduction and Purpose

The Simplified Trade System (STS) mandate is to simplify Australia's cross-border trade regulations. As part of this, Government identified border controls as a priority area for reducing the regulatory burden for traders in complying with border control regulations. This reform aims to implement a whole of Government approach to delivering and implementing border controls across Government, where appropriate.

This document presents an overview of the Border Controls Whole-of-Government (WofG) Policy Framework (the Framework) and how it operates. The Framework provides government at the federal, state and territory level with a consistent approach to creating, administering and reviewing border controls that is scalable, targeted, practically implementable and proportionate to the identified risks related to the movement of certain goods across the Australian border. The Framework is designed to set best practice by providing practical principles and considerations for government agencies to determine the suitability of border controls to achieve policy and regulatory objectives, and to reduce inconsistent or duplicative requirements and inefficiencies in border control processes that create unnecessary administrative burden on industry and government.

The Framework has been developed through iterative consultation with government agencies to clarify roles and responsibilities in the border controls space and to set the foundation for improved information sharing between agencies and a simpler, seamless process and cohesive user experience in cross border trade.

Scope

In scope

The Framework applies to border controls, a range of measures initiated by government agencies to prohibit, restrict, regulate or monitor the movement of certain goods across the Australian border (including Australian external Territories such as Norfolk, Christmas and Cocos Keeling Islands), based on the risk those goods pose to Australia's safety, security and international reputation. These controls can be enacted by domestic legislation, including but not limited to, the *Customs Act 1901*, the *Customs (Prohibited Imports) Regulations 1956*, the *Customs (Prohibited Exports) Regulations 1958*, the *Commerce (Trade Descriptions) Act 1905*, the *Biosecurity Act 2015* and the *Export Control Act 2020* and may support Australia's obligations under international agreements and conventions to which Australia is a party. Border controls can take the form of:

- absolute prohibitions on the import or export of certain goods

  Example: The importation of breeds of dog listed under Schedule 1 of the *Customs (Prohibited Imports) Regulations 1956* is prohibited absolutely.

- permits, permissions, certificates and licences issued by government agencies, statutory authorities or organisations provided with relevant authority under legislation to allow the import or export of goods which would otherwise be prohibited.

  Example: Under regulation 4 of the *Customs (Prohibited Exports) Regulations 1958*, the exportation from Australia of asbestos or goods containing asbestos (mentioned in Schedule 1 to the Regulations) is prohibited, unless a permit is in force, or other circumstances set out in the Regulations are met.

- conditions that must be met for the import or export of goods which would otherwise be prohibited

  Example: The importation of mobile phone, Wi-Fi, drone and GPS jamming devices is prohibited. There are no permits for the importation of these goods but there are exemptions listed in the *Radiocommunications Act 1992*. Exemption holders may import these goods for certain purposes such as law enforcement, national security, emergency services, manufacturing or product development.

- post border monitoring strategies that collect and analyse trade data in order to assist government agencies to achieve their compliance and policy objectives without the need for real-time intervention at the border.

  Example: The *Product Emissions Standard Act 2017* creates an offence to import emissions-controlled products that are not certified. This is enforced with the support of relevant import data from border enforcement agencies and assists the regulator with their compliance and enforcement operations.

Where it's not feasible to identify goods as they pass through the border, information provided by the border enforcement agency is critical to support post-border compliance operations. A post-border compliance model doesn't require real-time intervention at the border as prohibited activity and imports are detectable after goods have crossed the border.

Out of scope

In the context of the Framework, border controls do not include:

- controls on the movement of persons across the Australian border including human biosecurity measures around international travellers that protect Australia from serious communicable diseases, such as reporting ill passengers under the *Biosecurity Act 2015*

- trade related controls on individuals, organisations and premises, such as licences issued for border intermediaries (for example, customs brokers, depots and warehouses under the *Customs Act 1901*)

- revenue based controls on the import or export of goods, such as the requirement to pay the appropriate amount of import duty and GST before goods can be released for home consumption
- certificates of origin for goods used for claiming preferential treatment under relevant free trade agreements.

Governance

In accordance with Australian Government requirements, a governance process will be maintained between the Australian Border Force (ABF) and the Department of Agriculture, Fisheries and Forestry (DAFF) to ensure this Framework document remains fit for purpose and underpinned by concepts such as integrity, transparency and accountability.

The governance process will oversee procedures and reviews, including consultation, of the Framework. It will also review terms of reference, responsibilities, roles, accountabilities, capabilities and capacities of the governance process and its members. Where practicable, the Framework governance process will use existing interagency governance structures and business arrangements.

Major changes to the Framework may only be proposed after a Framework review process and require joint agreement from the Minister for Home Affairs and Minister for Agriculture prior to implementation.

Framework Monitoring and Review

The Framework will be reviewed on request by either ABF or DAFF, or every five (5) years from the date of its entry into force, unless ABF and DAFF mutually determine in writing that such review is not necessary at that time.

The objective of a review is to ensure that the information and guidance in the Framework remains fit for purpose, accurate, compliant with legislation, regulations and international treaty obligations, reflective of advancements in technology and practice, and does not have unintended, negative implications for government or industry.

The Framework review process will be led by ABF and DAFF and, at a minimum, involve consultation with policy owners and permit issuing agencies. Consultation between border enforcement agencies, policy owners and permit issuing agencies will determine whether major changes are needed, and these will subsequently require public consultation. If public consultation is required it will be primarily through established industry engagement forums and communication channels for each border enforcement agency.

Administration

At a minimum, a current version of the Framework will be maintained in a digital format and made externally available on ABF and DAFF websites.

The governance process will align administratively and functionally with the established standards for a government body. Agendas and minutes at a minimum will cover meeting details, attendees, agenda items, decisions or recommendations, and an executive summary. Risks, sensitivities, opportunities, deficiencies and challenges, opposing or disparate views, and financial and legal considerations will also be reflected.

Roles and Responsibilities

ROLE	DESCRIPTION
Policy owner	The government agency developing the policy which underpins a border control in order to address an identified issue within their area of portfolio responsibility. Responsibility for this underlying policy remains with the policy owner throughout the lifetime of a border control.
Permit issuing agency (PIA)	The government agency with responsibility for co-designing and administering a specific border control. PIA is an established term and is used here for convenience, noting border controls encompass a range of interventions and the PIA may or may not issue permits as part of their border control processes. The PIA is usually the policy owner, but this is not a requirement.
Border enforcement agency	One of two government agencies responsible for enforcing controls at the Australian border: • The ABF plays a central role in border security and managing the movement of all goods across Australia's borders. The ABF is also responsible for the cargo reporting and management system for the import and export of goods via air or sea cargo. ABF can also assist with monitoring strategies by providing customs clearance data. The ABF is the policy owner, PIA and border enforcement agency for its own border controls as well as the border enforcement agency for other PIAs. (While the ABF has a wider role, including the enabling of legitimate travel, this definition refers only to its role in the movement of goods across the border.) • DAFF manages potential biosecurity threats to Australia's agriculture, forestry and fisheries industries, tourism sector and environment, both at the border and domestically. DAFF is also responsible for administering export controls in alignment with importing country requirements and international standards and agreements. DAFF is mostly the policy owner, PIA and border enforcement agency for its own border controls, but does not enforce border controls for other PIAs.

Key Principles

A border control is a policy mechanism that forms part of a comprehensive policy response to an identified risk to Australia's safety, security or international reputation. When proposing or reviewing a border control as part of an overall action plan or national strategy, the policy owner will engage with the relevant border enforcement agency to co-design the border control, ensuring that it adheres to the following key principles:

Engaged

- The policy owner has engaged with the relevant border enforcement agency at the very start of the process, when the border control is initially being considered or conceived.
- The right people have been engaged throughout the process and all aspects of the proposed control have been considered, for example regulatory, legislative or trade law issues and communication is tailored to the audience and context so that it has the best chance of being well received.
- The policy owner and the relevant border enforcement agency have co-designed a communications strategy tailored to all affected stakeholders, including the public (where appropriate), importers, exporters, border industry, and operational staff within the border enforcement agency.

Scalable

- Border controls are required to be scalable and must be able to adapt and respond to evolving risk profiles, fluctuation in trade volumes and changing concerns.
- Border controls are designed and aligned with operating procedures before legislation is implemented.
- New border controls are aligned and scaled appropriately with existing and similar controls.
- Border controls are planned with an awareness of the timeframes for the development of legislation and passage through Parliament
- The implementation of a border control remains responsive to evolving risks.

Defined

- The purpose of the border control is clear, it is easy to understand why it is required, and what goods it applies to.
- The border control is developed to ensure ongoing control of the goods, even if those goods are modified slightly.
- The border control considers the volume of trade and practicality of identifying the goods.
- Border controls are based primarily on the objective characteristics of the goods at the point of import or export, rather than the intended or potential end use of the goods which cannot always be determined at the border. In cases where the end use of the goods is material to the risk they pose, the policy owner will provide advice to the border enforcement agency on how the intended end use may be determined.

Enforceable

- Border controls are clearly defined and are based on goods that can be easily identified.
- Border controls are practical to enforce, with a clear understanding of the interventions the border enforcement agency lawfully can provide, including their limitations, and the extent to which their interventions will deliver on the policy intent.
- Border controls reflect and are supported by existing domestic controls. Exceptions to this requirement are border controls on goods that, while not prohibited domestically, pose a risk by reason of their movement across international borders, for example biosecurity controls.
- The border enforcement agency has the appropriate enforcement authority and resources to implement and enforce the border control.

Modern

- Border controls are compatible with modern and digital trade processes, to enable a streamlined process and avoid human error and duplication of effort.
- Border controls are simple and intuitive for all stakeholders.
- The right data is used effectively to make informed decisions and is stored appropriately.
- Border regulators are provided timely access to the trade data they require to effectively administer regulation.

- Border controls are digitally focused for future reforms.

Appropriate to risk

- Border controls are not the default option for managing regulatory needs, particularly when domestic controls and/or regulations are more appropriate or effective, or when the goods are domestically manufactured and therefore will not be fully addressed by a border control.
- Border controls are warranted and proportionate to the risk they are intended to mitigate, with the consideration of legislation as the border control of last resort.
- Each agency has a clear role and responsibility, aligned to the Framework approach, in the operation of the intended border control.

Economically feasible

- Relative to the risk being managed, border controls do not impose undue regulatory burden or cost on either government or industry.
- The cost of implementing and managing enforcement of the border control is accurately calculated by the involved agencies and funding or cost recovery mechanisms are agreed.

Compliant with international law and conventions

- Border controls comply with Australia's obligations under international trade law agreements (World Trade Organization and free trade agreements).
- Border controls are implemented in a way that is consistent with conventions committing to international controls to which Australia is a party.

  Examples: The United Nations (UN) Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol (Single Convention), the UN Convention on Psychotropic Substances of 1971 (1971 Convention), the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade adopted 1998, and the Minamata Convention on Mercury adopted 2013 and entered into force 2017.
- Policy owners have engaged with relevant agencies to ensure that proposed border controls are compliant with Australia's international obligations and treaties.

Example: Torres Strait Treaty between Australia and Papua New Guinea that entered into force 1985.

Risk Assessment

As part of implementing a border control the policy owner will consider the goods in question, their potential impact on the Australian community, and regulatory options for managing the risk onshore, offshore and at the border. In consultation with the relevant border enforcement agency and other parties able to provide qualitative and quantitative data, the policy owner should consider the:

- likelihood of the risk related to the goods occurring
- consequences if nothing is done to address the risk.

The form and content of the risk assessment is a matter for agreement between the policy owner, PIA and border enforcement agency. It may include an assessment of the consequence and the likelihood of the unrestricted and uncontrolled importation or exportation of a category of goods, informing a risk rating. The risk rating of a particular category of goods will help to determine the appropriate border intervention model.

Border Intervention Models

The policy owner, PIA and the border enforcement agency will consult together on the most suitable border intervention model to apply to meet the policy intent of the border control and to adequately treat the relative risk of the goods being controlled. A legislated border control should be the last option considered by a policy owner. There are a range of available interventions which can be executed at various points in the trade journey. Consideration should be given to the effectiveness of the intervention, the costs involved, the possible impact on legitimate trade, and the ability and willingness of the policy owner and PIA to provide dedicated technical expertise in real time.

When considering whether to implement a control requiring real time intervention at the border, the primary considerations are international treaty obligations, the existence of an immediate risk to the community, economy or national security, and the available resourcing, competing priorities of the border enforcement agency and how such a control can be legally supported. If there is no immediate risk or treaty obligation, alternatives to legislated border controls are available and should be used.

Policy Authority

The policy owner has policy responsibility for a border control throughout its lifecycle. This includes seeking policy authority to implement the border control through legislative or regulatory changes (where required). Wherever possible, the policy owner should initially explore enacting a border control through legislation administered by their agency rather than defaulting to amending the *Customs (Prohibited Imports) Regulations 1956* or *Customs (Prohibited Exports) Regulations 1958*. This will ensure the policy owner can maintain the relevant legislation and help to avoid situations where the policy authority for a control becomes unclear due to organisational change and these 'orphaned' controls fall to the border enforcement agency to manage.

While the border enforcement agency takes on the responsibility for interventions at the border, the policy responsibility for a border control remains with the policy owner. The border enforcement agency can provide input to assist the policy owner, including data and intelligence. However, the policy owner remains responsible for clarifying policy intent and for making policy decisions on specific importations when requested by the enforcement agency, as well as ongoing monitoring and decision making on whether to continue, amend or discontinue the border control.

Implementing a Border Control

Where the policy owner and border enforcement agency are separate entities, the details of a border control will be agreed between the policy owner, PIA and border enforcement agency, and documented both as a record of the original policy intent and as an operational blueprint for how the parties will cooperate and manage the border control. Details of the border control should include:

- the definition and risk profile of the relevant goods
- the border intervention model
- governance arrangements for the border control
- key performance indicators to measure the effectiveness of the border control
- agreed roles and responsibilities of the policy owner, PIA and border enforcement agency
- information sharing arrangements
- enabling technology
- assessment against the Key Principles of the Framework.

Documented agreement between agencies on a border control can be through a Memorandum of Understanding (if one doesn't already exist between the agencies), or a Letter of Exchange. This is particularly important where there will be regular and ongoing information sharing arrangements. Any arrangements about information sharing must be in accordance with the agencies legal obligations.

Each of the Border Enforcement Agencies border enforcement agencies may develop and maintain their own supporting policy to implement the key principles outlined in this framework, which recognises their individual approaches to managing border risk.

Review Process for Border Controls

The policy owner and PIA are responsible for monitoring the border control on an on-going basis, as well as conducting a comprehensive evaluation at an interval agreed with the relevant border enforcement agency, to assess if the border control is operating effectively and remains fit for purpose.

Monitoring

The relevant border enforcement agency will provide regular reporting to the policy owner and PIA, as agreed, to assist the ongoing monitoring of the operation and effectiveness of the control. Periodic reporting will be assessed against the documented key performance indicators. In addition, any changes being considered by the policy owner and/or the PIA that have an impact (or potential impact) on the border control will require co-design with the border enforcement agency prior to any changes occurring.

Evaluation

In addition to ongoing monitoring, the policy owner and the PIA are responsible for a comprehensive evaluation of the effectiveness of the border control at an interval agreed with the relevant border enforcement agency, in order to:

- assess the effectiveness of the control against the policy intent
- assess the effectiveness of operational roles and responsibilities
- assess the appropriateness of the levels of funding/resourcing attached to the control
- review the border control against the emerging threat landscape and any changes to international regulations or obligations

- assess the effectiveness of reporting requirements and data sharing arrangements
- assess whether other legislation has been developed subsequently which introduces duplication or provides a more appropriate legislative basis for the border control.

The policy owner, in consultation with the border enforcement agency, will make a determination on whether the border control should continue for another agreed timeframe, be amended in order to better achieve its policy intent, or be discontinued if it is no longer necessary or effective.