



Australian Government

Australian Quarantine and Inspection Service

OTHER PARTY'S NAME

COMPLIANCE AGREEMENT

STANDARD TERMS

QUARANTINE ACT 1908

Client Reference No.

000000

AQIS

AUSTRALIAN QUARANTINE
AND INSPECTION SERVICE

DEPARTMENT OF AGRICULTURE, FISHERIES AND FORESTRY

COMPLIANCE AGREEMENT

<Reference Number>

between

[INSERT NAME OF OTHER PARTY AND ABN/ACN]

and

the COMMONWEALTH OF AUSTRALIA, represented by a Director of Quarantine or his/her delegate

PURPOSE:

- A. Section 66B(1) of the *Quarantine Act 1908 (Cth.)* provides that a Director of Quarantine may, on behalf of the Commonwealth, enter into a compliance agreement with a person in connection with:
 - (a) the application of particular procedures in respect of goods, which may include the doing of anything under the Act, or the doing of anything in connection with activities carried out in the performance of actions related to quarantine; and
 - (b) the supervision, monitoring and testing of the person's compliance with those procedures.
- B. A compliance agreement assists the protection of Australia from the introduction, establishment or spread of diseases or pests that will or could cause significant damage to human beings, animals or plants, other aspects of the environment or economic activities. Contravention of a compliance agreement is a serious matter and may constitute a criminal offence.
- C. The particular procedures covered by this agreement are specified in the Table of Schedules and Schedules to this agreement.

Note: (1) Section 66B(4) of the Act provides:

A quarantine officer may notify a party to a compliance agreement other than the Commonwealth in writing of procedures to which the agreement is to extend in addition to those specifically referred to in the agreement and, if such a notification is given, the agreement has effect as if those procedures were referred to in it.

(2) Fees may be payable under the Quarantine Act for services performed by AQIS in respect of or in connection with a compliance agreement.

AGREEMENT:

1. SCOPE AND INTERPRETATION OF AGREEMENT

1.1 This compliance agreement is comprised of the following documents as varied from time to time in accordance with this agreement:

1.1.1 these Standard Terms of agreement;

1.1.2 the Table of Schedules; and

1.1.3 each Schedule.

1.2 In this agreement, unless the contrary intention appears:

the Act means the *Quarantine Act 1908 (Cth.)*;

Director of Quarantine includes a person to whom a Director of Quarantine has delegated powers under section 66B of the Act;

Review Date means the date on which a Schedule ceases to operate (subject to earlier suspension or deletion) specified in that Schedule;

Note: Clause 10 sets out the effect of suspension, deletion or the Review Date of a Schedule.

Notifiable Event

means any of the following occurring for any reason:

- (a) the commencement of any process of liquidation, winding-up, dissolution or bankruptcy of the Other Party, the commencement of any form of external administration of the Other Party's affairs, or the making of any form of scheme of arrangement of the Other Party's affairs;
- (b) any assignment or other transfer, or cessation or material reduction, of those operations of the Other Party which include the procedures covered by this agreement;
- (c) any change in ownership or membership of the Other Party such that there is a change in any controlling interest in the Other Party;
- (d) any change in the senior management of the Other Party having responsibility for this agreement; or
- (e) the Other Party ceasing to fulfil a Prerequisite;

Operational Procedures Statements (OPS)

means the documents specified from time to time in the Table of Schedules as the Operational Procedures Statements for a Schedule;

Other Party

means the non-Commonwealth party to the agreement;

Quarantine Officer

means a quarantine officer appointed under the Act;

Prerequisite

means a prerequisite condition for a Schedule as specified in that Schedule;

Schedule

means a Schedule specified in the Table of Schedules from time to time;

Standard Terms

means this document including the 'Purpose' clause and clauses 1 to 17;

Table of Schedules

means the table setting out the list of Schedules and Operational Procedures Statements current for the purposes of this agreement from time to time, as initially set out at the end of this agreement or subsequently varied in accordance with clause 5.

- 1.3 Where a word or phrase has a defined meaning in this agreement, other grammatical forms of the word or phrase have a corresponding meaning.
- 1.4 Words and phrases with a defined meaning in the Act have the same meaning in this agreement.
- 1.5 Words in the singular include the plural and words in the plural include the singular.
- 1.6 In the event of inconsistency or ambiguity between:
 - 1.6.1 these Standard Terms of agreement and Operational Procedures Statements or any other document forming part of this agreement - these Standard Terms prevail; or
 - 1.6.2 any document forming part of this agreement and any other document referred to in but not forming part of this agreement - the document forming part of this agreement prevails.

2. OPERATION OF AGREEMENT

- 2.1 This agreement comes into force on execution by both parties and shall operate until it ceases or is suspended or cancelled in accordance with its terms.
- 2.2 This agreement is made for the purpose of, and is not intended to have any operation other than in accordance with, section 66B of the Act.
- 2.3 This agreement is subject to the Act, and does not in any way limit the powers of Quarantine Officers or other officers under the Act, or waive or reduce any obligations of the Other Party to comply with requirements under the Act.

Note: The word 'under' in 'under the Act' has the same meaning as in section 5(1A) of the Act. For example, 'under the Act' includes regulations, proclamations, import permits, etc made under the Act.

- 2.4 This agreement applies only to the Other Party directly, and does not apply to any agent, assignee or legal successor of the Other Party.
- 2.5 Except as allowed by this agreement, the Other Party may not contract the performance of the requirements imposed under this agreement.
- 2.6 The Other Party will not be relieved of its responsibility for meeting the requirements imposed under this agreement because of any:

- 2.6.1 assignment or contracting by the Other Party of the performance of the requirements imposed under this agreement; or
 - 2.6.2 involvement by the Commonwealth or its representatives in monitoring or enforcing the performance of the requirements imposed under this agreement.
- 2.7 Neither the Other Party nor any office-holder, employee, agent or contractor of the Other Party shall, by virtue of this agreement, have any delegation or authority to exercise any statutory power or function or otherwise act on behalf of a Director of Quarantine or any other part of the Commonwealth of Australia.

3. REQUIREMENTS UNDER THIS AGREEMENT

- Note:* (1) Requirements set out in each Schedule are defined by reference to the Operational Procedures Statements.
- (2) Section 66B(7) of the Act provides:
A party to a compliance agreement other than the Commonwealth is guilty of an offence if that party fails to ensure that any requirements imposed on that party under the agreement are complied with.
Maximum penalty: Imprisonment for 10 years.
- (3) The AQIS General Policies in the Operational Procedures Statements describe how AQIS will administer compliance with the Operational Procedures Statements.

- 3.1 The Other Party is required to comply with the requirements specified in each Schedule.
- 3.2 The Other Party is required to notify a Director of Quarantine as soon as it is reasonably able to do so if a Notifiable Event occurs or if a Notifiable Event is proposed or likely to occur.
- 3.3 The Other Party is required to ensure that its officers, employees, agents and contractors act consistently with, and ensure, the proper performance of the obligations of the Other Party under this agreement and under the Act.

4. CERTIFICATION OR ASSURANCE

- Note:* (1) Section 66B(6) of the Act provides:
A quarantine officer may release goods to which a compliance agreement applies from quarantine on the basis of a certificate or assurance, given by a person authorised under the agreement to give such a certificate or assurance, that all the procedures to which the agreement refers have been complied with in respect of the goods.
- (2) The procedures to be followed by the authorised person in giving the certificate or assurance will be set out in the Operational Procedures Statements.

- 4.1 A person specified in a Schedule for the purpose of this clause is authorised to give a certificate or assurance in respect of goods in accordance with this agreement for the purpose of section 66B(6) of the Act.

5. VARIATION OF TABLE OF SCHEDULES

Note: Section 66B(3) of the Act provides:

A compliance agreement may provide that, in circumstances stated in the agreement, a Director of Quarantine may, by written notice given to a party to the agreement other than the Commonwealth, cancel or vary the agreement or suspend its operation for a period, or until the happening of an event, stated in the notice.

- 5.1 The Table of Schedules may be varied by a Director of Quarantine as provided in this agreement.
- 5.2 To vary the Table of Schedules, a Director of Quarantine must sign the varied Table of Schedules and give a copy to the Other Party at the address identified in clause 16 of this agreement.

Note: The Table of Schedules is a controlled listing of the Schedules in force under this agreement, and the Operational Procedures Statements referred to in those Schedules, from time to time.

6. VARIATION OF OPERATIONAL PROCEDURES STATEMENTS

- 6.1 A reference in the Table of Schedules to a document forming part of the Operational Procedures Statements may be varied as follows:
- 6.1.1 a variation to the reference to the Processes and Outcomes Document section of the Operational Procedures Statements may be agreed between the Other Party and a Director of Quarantine;
- 6.1.2 a variation to the reference to any other section of the Operational Procedures Statements may be determined by a Director of Quarantine;

Note: The sections of Operational Procedure Statements referred to in clause 6.1.2 are AQIS policy documents: see clause 14.

- 6.1.3 the variation will take effect once the Table of Schedules is varied in accordance with clause 5.

Note: Variations to the references to Operational Procedures Statements in the Table of Schedules will be made to reflect in the compliance agreement changes to the documents comprising the Operational Procedures Statements.

7. VARIATION OF SCHEDULES BY AGREEMENT

- 7.1 A Schedule may be added to this agreement, deleted from this agreement, suspended for a period or until the happening of a specified event, or otherwise varied, by agreement in writing between the Other Party and a Director of Quarantine.
- 7.2 The addition, deletion, suspension, lifting of suspension or variation will take effect once the Table of Schedules is varied in accordance with clause 5.

8. VARIATION OF STANDARD TERMS BY AGREEMENT

- 8.1 The Standard Terms may be varied by agreement between the Other Party and a Director of Quarantine.
- 8.2 A variation under clause 8.1 will take effect from the time specified in the agreement between the Other Party and a Director of Quarantine or, if no time is specified, from the time the variation is agreed by the Other Party and a Director of Quarantine.

9. VARIATION BY A DIRECTOR OF QUARANTINE

- 9.1 A Director of Quarantine may, by giving notice to the Other Party, and without the consent of the Other Party, vary this agreement by:
- 9.1.1 varying the reference in the Table of Schedules to the Processes and Outcomes Document section of the Operational Procedures Statements;
 - 9.1.2 adding a Schedule;
 - 9.1.3 deleting a Schedule;
 - 9.1.4 varying a Schedule;
 - 9.1.5 suspending the operation of a Schedule for a period, or until the happening of an event, stated in the notice; or
 - 9.1.6 varying the Standard Terms of this agreement;
- provided that any one or more of the following is the case:
- 9.1.7 a Director of Quarantine has first provided the Other Party with prior notice and a reasonable opportunity in all the circumstances to consult with a Director of Quarantine on the variation, and a Director of

Quarantine has taken into account any matters raised by the Other Party in respect of the variation;

9.1.8 subject to clause 9.2, a Director of Quarantine is satisfied on reasonable grounds that the Other Party may have failed to comply, or is likely to fail to comply, with any requirement imposed on the Other Party under this agreement;

9.1.9 the Other Party fails to give consent to the entry of a Quarantine Officer to premises occupied or controlled by the Other Party, where a Director of Quarantine considers that:

9.1.9.1 the entry is reasonably necessary for the purpose of the Quarantine Officer deciding whether to exercise a power under the Act or finding out whether the Act has been complied with; or

9.1.9.2 there are reasonable grounds for suspecting that there is, or may be, evidential material at the premises;

Note: Division 2 of Part VIA of the Act deals with a Quarantine Officer's powers to enter premises for the purpose of deciding whether to exercise powers under the Act or finding out whether the Act has been complied with. Division 3 of Part VIA of the Act deals with a Quarantine Officer's powers to enter premises where there are reasonable grounds for suspecting that there may be evidential material on the premises. Division 6 of Part VIA specifies general rules about a Quarantine Officer's powers in relation to premises.

9.1.10 a Director of Quarantine is satisfied on reasonable grounds that the Other Party may have failed to comply, or is likely to fail to comply, with any requirement or obligation under the Act in relation to this agreement or the goods or procedures covered by this agreement or the supervision, monitoring and testing of the Other Party's compliance with those procedures; or

Note: Section 70CA of the Act provides for offences in relation to false or misleading statements in relation to compliance agreements.

9.1.11 a Director of Quarantine is satisfied on reasonable grounds that the Other Party has impeded or prevented the lawful exercise of powers under the Act by a Quarantine Officer in relation to the supervision, monitoring, testing or enforcement of the Other Party's compliance with this agreement or the Act.

Note: Section 66AA of the Act specifies the general powers of Quarantine Officers in relation to premises. Other sections of the Act also specify powers of Quarantine Officers.

- 9.2 Where a Director of Quarantine is satisfied on reasonable grounds that the Other Party may have failed to fulfil, or is likely to fail to fulfil, a Prerequisite for a Schedule, a Director of Quarantine may, by giving notice to the Other Party, vary this agreement by:
- 9.2.1 deleting a Schedule; or
 - 9.2.2 suspending the operation of a Schedule for a period, or until the happening of an event, stated in the notice.
- 9.3 If a Director of Quarantine considers that a possible or likely failure to comply with this agreement by the Other Party may be capable of remedy or avoidance, a Director of Quarantine may give notice to the Other Party of his or her intention to vary the agreement under clause 9.1 or 9.2 unless the failure is remedied or avoided, and require the failure to be remedied or avoided to the satisfaction of a Director of Quarantine within a time specified in the notice.
- 9.4 Where a variation under clause 9.1 or 9.2 requires a variation to the Table of Schedules, the variation will not take effect until the Table of Schedules is varied in accordance with clause 5.
- 9.5 Subject to clause 9.4, a variation under clause 9.1 or 9.2 will take effect at the time specified in the notice from a Director of Quarantine to the Other Party or, if no time is specified, from the time the notice is given by a Director of Quarantine to the Other Party.

10. EFFECT OF SUSPENSION, DELETION OR REVIEW DATE OF A SCHEDULE

- 10.1 Following the Review Date of a Schedule, or from the time a Director of Quarantine gives the Other Party a notice varying the agreement by deletion of a Schedule under clause 9, or during the period of operation of a notice varying the agreement by suspension of a Schedule under clause 9, the Other Party is required to cease applying the procedures specified in the affected Schedule in respect of goods covered by the affected Schedule, unless notified under clause 10.2 to continue to apply such procedures in whole or in part.
- 10.2 During the following periods:
- 10.2.1 a period of 14 days, or such other period as is notified to the Other Party by a Director of Quarantine for the purpose of this clause, following the Review Date;
 - 10.2.2 the period from the giving of notice varying the agreement by deletion of a Schedule under clause 9 until the time the notice takes effect; or

10.2.3 the period of operation of a notice varying this agreement by suspension of a Schedule under clause 9;

the Other Party is required to comply with any directions notified by a Director of Quarantine in relation to:

10.2.4 the application of procedures in respect of goods under the Act; or

10.2.5 quarantine in respect of goods covered by the affected Schedule; or

10.2.6 the supervision, monitoring and testing of compliance with those procedures.

10.3 The affected Schedule shall cease to form part of this agreement on the expiry of a period specified in clauses 10.2.1 or 10.2.2.

10.4 If the affected Schedule is the last remaining Schedule to this agreement, when the affected Schedule ceases to form part of this agreement, this agreement shall cease.

11. SUSPENSION OR CANCELLATION BY A DIRECTOR OF QUARANTINE

Note: Section 66B(3) of the Act provides:

A compliance agreement may provide that, in circumstances stated in the agreement, a Director of Quarantine may, by written notice given to a party to the agreement other than the Commonwealth, cancel or vary the agreement or suspend its operation for a period, or until the happening of an event, stated in the notice.

11.1 A Director of Quarantine may, by giving notice to the Other Party, and without the consent of the Other Party:

11.1.1 suspend the operation of this agreement for a period, or until the happening of an event, stated in the notice; or

11.1.2 cancel this agreement from a time specified in the notice;

provided that any one or more of the following is the case:

11.1.3 a Director of Quarantine has first provided the Other Party with prior notice and a reasonable opportunity in all the circumstances to consult with a Director of Quarantine on the suspension or cancellation, and a Director of Quarantine has taken into account any matters raised by the Other Party in respect of the suspension or cancellation;

11.1.4 subject to clause 11.2, a Director of Quarantine is satisfied on reasonable grounds that the Other Party may have failed to comply, or

is likely to fail to comply, with any requirement imposed on the Other Party under this agreement;

11.1.5 the Other Party fails to give consent to the entry of a Quarantine Officer to premises occupied or controlled by the Other Party, where a Director of Quarantine considers that:

11.1.5.1 the entry is reasonably necessary for the purpose of the Quarantine Officer deciding whether to exercise a power under the Act or finding out whether the Act has been complied with; or

11.1.5.2 there are reasonable grounds for suspecting that there is, or may be, evidential material at the premises;

Note: Division 2 of Part VIA of the Act deals with a Quarantine Officer's powers to enter premises for the purpose of deciding whether to exercise powers under the Act or finding out whether the Act has been complied with. Division 3 of Part VIA of the Act deals with a Quarantine Officer's powers to enter premises where there are reasonable grounds for suspecting that there may be evidential material on the premises. Division 6 of Part VIA specifies general rules about a Quarantine Officer's powers in relation to premises.

11.1.6 a Director of Quarantine is satisfied on reasonable grounds that the Other Party may have failed to comply, or is likely to fail to comply, with any requirement or obligation under the Act in relation to this agreement or the goods or procedures covered by this agreement or the supervision, monitoring and testing of the Other Party's compliance with those procedures; or

Note: Section 70CA of the Act provides for offences in relation to false or misleading statements in relation to compliance agreements.

11.1.7 a Director of Quarantine is satisfied on reasonable grounds that the Other Party has impeded or prevented the lawful exercise of powers under the Act by a Quarantine Officer in relation to the supervision, monitoring, testing or enforcement of the Other Party's compliance with this agreement or the Act.

Note: Section 66AA of the Act specifies the general powers of Quarantine Officers in relation to premises. Other sections of the Act also specify powers of Quarantine Officers.

11.2 If a Director of Quarantine considers that a possible or likely failure to comply with this agreement by the Other Party may be capable of remedy or avoidance, a Director of Quarantine may give notice to the Other Party of his or her intention to suspend or cancel the agreement under clause 11.1 unless the failure is remedied or avoided, and require the failure to be remedied or avoided to the satisfaction of a Director of Quarantine within a time specified in the notice.

12. SUSPENSION OR CANCELLATION ON REQUEST OF THE OTHER PARTY

- 12.1 Following a notice from the Other Party requesting the suspension of this agreement, a Director of Quarantine may (but is not obliged to), by notice to the Other Party suspend the operation of this agreement for a period, or until the happening of an event, stated in the notice.
- 12.2 Following a notice from the Other Party requesting the cancellation of this agreement, a Director of Quarantine will by notice to the Other Party cancel the agreement from a time specified in the notice.

13. EFFECT OF SUSPENSION OR CANCELLATION OF AGREEMENT

- 13.1 From the time a Director of Quarantine gives the Other Party a notice of cancellation of this agreement under clause 11 or 12, or during the period of operation of a notice of suspension of this agreement under clause 11 or 12, the Other Party is required to cease applying the procedures specified in the Schedules in respect of goods covered by this agreement, unless notified under clause 13.2 to continue to apply such procedures in whole or in part.

- 13.2 During the following periods:

- 13.2.1 the period from the giving of notice of cancellation of this agreement under clause 11 until the time the notice takes effect; or
- 13.2.2 the period of operation of a notice of suspension of this agreement under clause 11;

the Other Party is required to comply with any directions notified by a Director of Quarantine in relation to:

- 13.2.3 the application of procedures in respect of goods under the Act; or
- 13.2.4 quarantine in respect of goods covered by this agreement; or
- 13.2.5 the supervision, monitoring and testing of compliance with those procedures.
- 13.3 This agreement shall cease on the expiry of a period specified in clause 13.2.1.

14. POLICY UNDERTAKINGS OF THE COMMONWEALTH

14.1 Subject to this clause 14, the Commonwealth undertakes to comply with the Commonwealth policies set out in this agreement or the Operational Procedures Statements.

14.2 The Commonwealth may decide not to follow the policies referred to in clause 14.1 where it is impractical or otherwise inappropriate to do so in any particular case, and may review and vary such policies at its discretion.

Note: Clause 6.1.2 provides for the Table of Schedules to be varied to reflect changes to AQIS policies forming part of the Operational Procedures Statements.

14.3 This agreement will not operate to give rise to any expectation on the part of the Other Party, or to impose any obligation on the Commonwealth or any officer, servant or agent of the Commonwealth, which would prevent the Commonwealth or any officer, servant or agent of the Commonwealth from departing from Commonwealth policies referred to in clause 14.1, or which would impose any liability on the Commonwealth or any officer, servant or agent of the Commonwealth where any such policy is not followed.

15. ACKNOWLEDGMENT

15.1 The Other Party acknowledges that the Commonwealth may use or disclose or may be required by law to use or disclose the compliance agreement, the Operational Procedures Statements, and information and documents created under or obtained under the Act or the compliance agreement relating to the compliance agreement (which may include business information and/or personal information within the meaning of the *Privacy Act 1988*) for lawful purposes directly related to the functions or activities of the Australian Quarantine and Inspection Service, including the enforcement of the Act. This may include disclosure to other agencies, such as the Australian Customs Service and state agencies assisting the Commonwealth to perform quarantine functions, and disclosure to parliamentary inquiries.

16. NOTICES UNDER THIS AGREEMENT

16.1 This clause applies to any notice to be given or any matter to be agreed between a Director of Quarantine and the Other Party for the purpose of this agreement, except where the contrary intention appears.

16.2 A notice must be in writing and signed by a Director of Quarantine or a representative of the Other Party authorised to sign the notice on behalf of the Other Party.

16.3 A notice must be given to one of the following addresses:

16.3.1 where the notice is to be given to a Director of Quarantine:

Attention: Manager, Industry Partnerships Unit

Postal address: GPO Box 858 Canberra ACT 2601

Physical address: Edmund Barton Building Barton ACT 2601

Facsimile: (02) 6272 5888

16.3.2 where the notice is to be given to the Other Party:

Attention:

Postal address:

Physical address:

Facsimile:

Telephone:

Note: An alternative address may be specified in a Schedule or the Operational Procedures Statements for particular operational purposes.

16.4 A notice must be given by one of the following methods:

16.4.1 delivered by hand to the physical address of the recipient - and is deemed to be given upon delivery;

16.4.2 sent by pre-paid ordinary post within Australia to the postal address of the recipient - and is deemed to be given upon the expiration of 2 business days after the date on which it was sent; or

16.4.3 sent by facsimile message to the facsimile address of the recipient - and is deemed to be given upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

16.5 A matter to be agreed between a Director of Quarantine and the Other Party must be agreed in writing signed by a Director of Quarantine and a

representative of the Other Party authorised to agree to the matter on behalf of the Other Party, and is taken to have been agreed when signed by a Director of Quarantine and the representative of the Other Party.

- 16.6 For the purpose of this clause 16, a reference to writing does not include writing in electronic form.
- 16.7 In addition to the other clauses of this clause 16, a Director of Quarantine may by notice to the Other Party approve a method of electronic communication to be used for the purposes of this agreement and may specify any instructions or conditions (including any authentication requirements) to apply to the use of that method.

17. EXECUTION

I am a director, manager, or senior executive of
ABN/ACN ('the Other Party') who:

- a) has responsibility for the business operations of the Other Party; and
- b) is authorised to enter into contracts for the Other Party.

SIGNED for and on behalf of)

.....)

ABN/ACN on:)

.....)

Date

by:)

.....)

Name

.....)

Position

.....)

Signature

Note: The signature block for each Schedule to this agreement should also be signed for and on behalf of the Other Party.

SIGNED by a Director of Quarantine)

or delegate on:)

.....)

Date

by:)

.....)

Name

.....)

Position

.....)

Signature