

The Auditor-General  
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Performance Audit

## **Effective Cross-Agency Agreements**

Australian National Audit Office

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of Australia 2010

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Canberra ACT  
26 May 2010

Dear Mr President  
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit across agencies in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit and the accompanying brochure. The report is titled *Effective Cross-Agency Agreements*.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the printed name.

Ian McPhee  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

## AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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# Glossary

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AusTender	The Australian Government's procurement information system, managed by Finance. AusTender provides centralised publication of Australian Government business opportunities, annual procurement plans, multi-use lists and contracts awarded.
Connected Government	Website hosted by APSC containing information for agencies working together, based on the 2004 MAC report, Connecting Government.
Cross-agency Agreement	A documented relationship for the provision of services, exchange of information, other administrative function or support, signed between two or more agencies. For example, a Memorandum of Understanding or a Service Level Agreement.
Grant	FMA Regulation 3A(1) defines a grant as an arrangement for the provision of financial assistance by the Commonwealth, which is intended to help the recipient achieve its goals as well as promote Australian Government policy objectives. The grant recipient is required to act in accordance with any terms or conditions specified in the arrangement. <sup>1</sup>
Indemnity	A legally binding promise whereby a party undertakes to accept the risk of loss or damage another party may suffer. <sup>2</sup>

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<sup>1</sup> Department of Finance and Deregulation, Financial Management Guidance No.23, July 2009, *Commonwealth Grant Guidelines. Policies and Principles for Grants Administration*, pp. 3–4.

<sup>2</sup> Department of Finance and Deregulation, Financial Management Guidance No.6, September 2003, *Guidelines for Issuing and Managing Indemnities, Guarantees, Warranties and Letters of Comfort*, p. 3.

Liability	A legal obligation to pay or compensate another party. Liabilities can arise from specific clauses in a contract, or as a result of some other action. <sup>3</sup>
Memorandum of Understanding	A written agreement between two or more parties that defines the working relationship, expectations and responsibilities. MOUs are usually not legally binding on the Parties.
Warranty	A promise whereby one party provides certain assurances to another party, for example, that an item sold is the vendor's to sell, is fit for use, and that for a specified period defective parts will be replaced or otherwise rectified.

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<sup>3</sup> Australian National Audit Office and Department of Finance and Administration. *Better Practice Guide—Developing and Managing Contracts: Getting the Right Outcome, Paying the Right Price*, February 2007, p. 39.



# Abbreviations

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ANAO	Australian National Audit Office
ATO	Australian Taxation Office
AQIS	Australian Quarantine and Inspection Service
BPA	Business Partnership Agreement
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CPG	<i>Commonwealth Procurement Guidelines</i>
DAFF	Department of Agriculture, Fisheries and Forestry
DCCEE	Department of Climate Change and Energy Efficiency
DEEWR	Department of Education, Employment and Workplace Relations
DFAT	Department of Foreign Affairs and Trade
DIAC	Department of Immigration and Citizenship
DHS	Department of Human Services
DoHA	Department of Health and Ageing
DPMC	Department of the Prime Minister and Cabinet
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
Finance	The Department of Finance and Deregulation
FMA Act	<i>Financial Management and Accountability Act 1997</i>
GBE	Government Business Enterprise (specified bodies under the CAC Act)

MAC	Management Advisory Committee
MOU	Memorandum of Understanding
NCF	National Collaboration Framework (NCF). Includes a user guide and template for cross-agency agreements. The National Collaboration Program team is located within Finance.
SLA	Service Level Agreement

# **Summary and Better Practice Principles**



# Summary

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## Collaborating across public sector agencies

1. Over recent years, Australian governments have advocated a stronger focus on interagency collaboration and whole of government approaches to achieve effective program implementation, seamless service delivery and information sharing. As identified in the 2004 report *Connecting Government*, ‘the APS should be striving to create a “culture of collaboration” that aids the sharing of research, experience and expertise in addressing intractable problems.’<sup>4</sup>
2. In this endeavour, a ‘culture of collaboration’ has become a growing characteristic of the public sector. On a day-to-day basis, officials from different agencies work across organisational boundaries to deliver government services, or collaborate in the formulation of national policies. Interdepartmental Committees (IDCs), taskforces, and joint working parties are just a few of the mechanisms used to coordinate substantial cross-agency initiatives.
3. While many agencies cooperate successfully on an informal basis, formal written agreements are frequently used to facilitate productive cross-agency relationships. Usually in the form of a Memorandum of Understanding (MOU), each document establishes a foundation for a working relationship, setting out essential roles and responsibilities, and defining agency obligations in terms of governance, performance expectations, and reporting arrangements. The agreements also contain agreed specifications for particular services or deliverables, including quality measures and timeframes.
4. In this audit, 21 agencies reported over 1800 current agreements; an indication of the sizeable commitment to cross-agency activities across the broader Australian Public Service (APS) and the breadth of agency interdependencies.<sup>5</sup> The audit examined a cross-section of agreements to determine if they were generally fit-for-purpose and consistent with sound

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<sup>4</sup> Management Advisory Committee (MAC) 4, *Connecting Government—Whole of Government Responses to Australia’s Priority Challenges*, 2004.

<sup>5</sup> As at March 2010 there were a total of 195 Commonwealth agencies: 103 Financial Management and Accountability Act 1997 (FMA Act) agencies and 92 Commonwealth Authorities and Companies Act 1997 (CAC Act) bodies. Information from <[www.finance.gov.au](http://www.finance.gov.au)> [accessed 2 March 2010].

administrative practices.<sup>6</sup> A particular aim of the audit was to bring together essential information to inform better practice.

## **Key principles of cross-agency agreements**

5. Cross-agency agreements are diverse in their form and content, each tailored to suit a specific situation and range of requirements. Their purpose ranges from a simple annual exchange of data between two agencies, to clarifying respective responsibilities where programs are interdependent (such as border security), or undertaking research on behalf of another agency. Many agreements cover specifications and performance measures for the delivery of services or products, such as Information Technology services or payments of unemployment benefits, while others support the implementation of complex programs through multiple agencies.

6. An agreement may be represented by a simple Exchange of Letters, a complex MOU, Business Partnership, or a high level Collaborative Head Agreement.<sup>7</sup> However, regardless of their name or structure, agreements between Australian Government agencies are typically non-legally binding, as they are between parts of the same legal entity.<sup>8</sup> Consequently, the success of cross-agency arrangements is often dependent on relationship management and the good will and cooperation of the respective parties.

7. Although cross-agency agreements are not usually legally binding, the signatories are agreeing to fulfil the obligations and roles therein. There is an expectation that arrangements will be based on sound administrative practices and ethical conduct, with all parties complying with key elements of the Commonwealth's governance frameworks. To assist agencies in meeting relevant goals and outcomes, the content of agreements needs to support key principles of program effectiveness, performance management, transparency and accountability.

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<sup>6</sup> As defined by various Government legislation and better practice guides (see Table 2.5).

<sup>7</sup> In practice, memoranda of understanding are often given different names to reflect the focus of the agreement. For simplicity, the term 'cross-agency agreements' is used in this report.

<sup>8</sup> Agencies that belong to the same legal entity cannot contract with each other. This does not necessarily apply to agreements between Commonwealth agencies where one or more is established under the Commonwealth Authorities and Companies Act 1997 (CAC Act). ANAO and Finance, 2007, *Better Practice Guide. Developing and Managing Contracts: Getting the Right Outcome, Paying the Right Price*, p. 24.

8. Key requirements for cross-agency agreements include defining: the objectives of the arrangement, including desired outcomes and timeframes; roles and responsibilities of each party; the goods or services to be provided; implementing suitable governance and communication arrangements; considering risks, and incorporating reporting and review provisions. The development of appropriate guidance material and agency controls can also be of great value to agencies, particularly for ensuring the currency, quality and appropriate terms of agreements.

## Public sector administrative reform

9. The report *Ahead of the Game: Blueprint for the Reform of Australian Government Administration*, released in March 2010, proposes reforms which ‘aim to improve outcomes for citizens, through more integrated services, better policy advice...through changes to systems, structures and practices’. Visions for the future include: an APS-wide focus on capability; effective measurement of the outcomes for whole of government objectives; and consistent quality in the delivery and effectiveness of programs.<sup>9</sup>

## Audit objective and scope

10. The audit objective was to assess whether agreements between Australian Government (Commonwealth) agencies reflect sound administrative practices. To meet this objective, the audit reviewed current government policy and a range of better practice guidelines, conducted interviews with agencies and examined cross-agency agreements, to formulate suitable audit criteria and subsequently develop better practice principles.

11. The audit examined 200 cross-agency agreements from 21 public sector agencies (the 19 portfolio departments, Centrelink and the Australian Taxation Office).

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<sup>9</sup> Department of the Prime Minister and Cabinet, Advisory group on reform of Australian Government Administration, *Ahead of the Game: A Blueprint for the Reform of Australian Government Administration*, March 2010, pp. 63, 74, and 81.

## Overall conclusion

12. An important focus of the Australian Public Service (APS) in recent years has been to operate more effectively across organisational boundaries, in order to strengthen whole of government policy implementation, service delivery, and sharing of information. To facilitate productive coordination between Australian Government agencies, cross-agency agreements are frequently used to formalise collaborative relationships and define essential business requirements. While such agreements are usually non-legally binding, they need to be administered according to sound governance principles, including accountability, transparency and value for money.

13. Within the current APS environment, cross-agency agreements continue to be important administrative tools. A wide range of well-structured agreements exist across agencies. The negotiation and development of complex agreements can be lengthy and resource intensive, as agencies seek to agree on administrative arrangements. In the majority of cases, agreements provide a useful basis for the function they are intended, and almost always provide adequate specifications for roles and responsibilities, activities, and deliverables. The effort and skill demonstrated by agencies in negotiating, developing and managing cross-agency arrangements is substantial, and has assisted in the successful implementation of many major policy initiatives.

14. Notwithstanding this, there are opportunities to improve several aspects of the development and management of agreements to achieve a more consistent and effective basis for cross-agency relationships and whole of government activities.

15. Individually, a few agencies have developed their own systems, policies and templates to streamline the development and management of agreements. While these steps have been beneficial for producing agreements that are fit-for purpose, current and explicable, inconsistency exists in the overall clarity, quality and completeness of agreements across the 21 agencies. This is generally indicative of the diversity of administrative practices between agencies, but also reflects the limited availability of guidance for developing non-legally binding agreements.



16. In many instances, the agreements provided only a perfunctory basis for building interagency collaboration, overlooking key provisions and important aspects of relationship management, risk management, outcome reporting and review.<sup>10</sup> Performance indicators were present in about half the agreements, but these were seldom linked to broader outcomes. The absence of this information can reduce the usefulness of the agreement in providing a clear focus on what is to be achieved. For approximately one third of agreements, the non-legal basis of the arrangement was not made clear. A small percentage included legal clauses of little practical value in agreements between same legal entities.

17. To improve the overall quality, usefulness and management of cross-agency agreements requires each agency to develop a consistent approach, more cognisant of shared risks and accountabilities. To this end, agencies would benefit from developing appropriate and accessible guidance material, and mechanisms for internal scrutiny of agreements, tailored to reflect their particular situation.<sup>11</sup> These steps will provide efficiencies by improving common understanding of cross-agency agreements, and help to traverse organisational barriers more effectively. The ANAO has compiled better practice principles to assist agencies in reaching this goal.

## Better practice principles

18. Better practice principles, presented at the end of the Key Findings and Chapters 2, 3, 4 and 5, are based on the audit findings and consideration of relevant government policy, guidelines and agency input during the audit. They are not exhaustive, and should be read in conjunction with other relevant guidelines, particularly those referred to in the body of this audit report.

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<sup>10</sup> The ANAO assessed 200 agreements as part of the audit.

<sup>11</sup> Notwithstanding that some agencies have made progress, to various degrees, in these areas.

## Key findings by chapter

### Principles and practice (Chapter 2)

19. In the current Australian Public Sector (APS) environment, cross-agency agreements remain an important device for supporting a whole of government approach to service delivery, program implementation and information sharing. However, the number of agreements that exist across the APS is unknown. In this audit, 21 agencies reported around 1800 current agreements, indicating that the number of agreements in place across the APS is likely to well exceed this.

20. Cross-agency agreements are typically Memoranda of Understanding (MOU) between parts of the same legal entity, and are therefore non-legally binding. However, the diversity and complexity of functions and tasks has led each agency to adopt a range of titles, structures, and principles to tailor cross-agency agreements to their own needs and preferences. This decentralised approach has contributed to inconsistency in the content and context of the agreements, as well as inaccurate perceptions about their legal status, and at times, their legal enforceability. Each cross-agency agreement needs clarity in these areas to avoid misinformation which may unsettle inter-agency relationships.

21. As non-legally binding arrangements, the effective management of many cross-agency initiatives is highly reliant on establishing sound inter-agency relationships, including mechanisms for resolving disputes between agencies (also see Chapter 4). While suitable governance arrangements are defined and implemented in the majority of cases, a substantial number of agreements gave only cursory guidance on the management of disputes, occasionally including options for legal recourse. While there is no need to impose arduous requirements for governance and dispute resolution, cross-agency collaboration can be improved by pre-empting significant problems and having appropriately responsive mechanisms agreed and in place.

### Guidelines (Chapter 3)

22. Extensive prescribed guidelines are available on procurement in the APS, in particular the Government's accountability framework and supporting documents (especially the Department of Finance and Deregulation's procurement guidelines), and other guidance material such as ANAO better practice publications. In contrast, there is limited prescribed guidance to help APS officers in developing and managing cross-agency agreements. While

many aspects of the government's procurement framework and better practice guides can be aptly applied, specific guidance material is required to improve the overall consistency and quality of cross-agency agreements.

**23.** In the absence of authoritative guidance, agencies follow a range of information contained in the Government's accountability framework, better practice guides, and internally developed procedures. Established in 2005, the National Collaborative Framework (NCF) has provided useful guidance on aspects of cross-agency agreements, in particular Collaborative Head Agreements. However, there was little evidence during the audit that the NCF templates or procedures are widely used by agencies.

**24.** Several agencies have established useful internal web-based material, such as procedures and templates, to provide guidance in developing cross-agency agreements. Apart from this, agency sources of information tend to include: previous agreements, local expertise, legal advice, and contract guidelines. Each of these sources has strengths and weaknesses that can affect the accuracy and effectiveness of the agreements. To achieve a more consistent and appropriately informed approach to developing and managing cross-agency agreements, requires agencies to provide an authoritative and accessible resource to guide staff. Ideally, agencies should draw together existing information, such as the NCF and government guidelines, to best reflect individual agency needs as well as broader government requirements.

## **Key provisions (Chapter 4)**

**25.** Cross-agency agreements are used for a wide range of reasons, and cover a broad spectrum of work across the public sector. Each agreement can be tailored to suit the specific situation and the agencies' defined obligations. There are, however, several key provisions that contribute to the administrative soundness of non-legally binding cross-agency agreements. Inclusion of these provisions helps to bring about sound understanding by all parties of the purpose, responsibilities, and core requirements of the agreement. In particular, the ANAO examined: objectives; roles and responsibilities; performance indicators; resources and budgetary issues; and mechanisms for the management of risks, reviews, and disputes.<sup>12</sup>

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<sup>12</sup> ANAO, *Better Practice Guide—Public Sector Governance, volume 2, Guidance Paper No. 7*, 2003, p. 3.

26. An assessment of 200 cross-agency agreements showed an inconsistent application of key provisions across the agreements and between agencies. The majority of agreements contained a cogent explanation of roles and responsibilities, and the objectives were usually stated. However, additional background information to better convey the broader purpose and context of the arrangement, and more consistent linking of the objectives to desired outcomes, would improve the clarity of cross-agency arrangements in many instances.

27. Few agreements featured requirements for risk identification, assessment or mitigation strategies. Establishing an agreement can, in itself, be a useful mechanism for managing and reducing risks in cross-agency arrangements, however, clearer recognition and documentation of potential operational risks, including shared risks, would help agencies in planning for the management and early resolution of any problems.

28. While many agreements mentioned review, few included the review's timing or mechanism. Of the one third of agreements that specified measurable performance indicators, a significant proportion of these would improve their overall performance reporting by better aligning the performance indicators to program objectives and higher outcomes. Where relevant, inclusion of clearer specifications on funding arrangements, particularly the nature and source of funds, would help to convey the significance and materiality of cross-agency arrangements. This additional visibility would assist agencies in focusing monitoring and other compliance activities on more substantial agreements where performance against budget commitments is necessary.

29. Collectively, improvements in these areas will provide greater clarity of the basis of cross-agency relationships, and better position agencies to monitor the performance and overall effectiveness of their cross-agency arrangements. This will become increasingly more important as recently proposed reforms in Australian Government administration move towards the introduction of shared outcomes across portfolios.<sup>13</sup>

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<sup>13</sup> Department of the Prime Minister and Cabinet, *Ahead of the Game: Blueprint for the Reform of Australian Government Administration*, March 2010, pp. 63, 66 and 81. Recommendation 8.2 'Introduces shared cross portfolio outcomes in priority areas where more than one portfolio is responsible for achieving government outcomes'.

## **Effective agency coordination (Chapter 5)**

30. Cross-agency agreements are frequently used to formalise affiliations between Australian Government agencies. However, at the agency and broader government level, there is limited information about the full extent of their use, or the costs, benefits and consistency of processes employed for such arrangements.

31. To monitor the quality and currency of agreements, some agencies have established central coordination units, using registers to record details of agreements and track progress against key requirements. However, these practices are not consistent or widespread.

32. There are many potential benefits in maintaining an accurate and up to date register. For example, a well managed can be used to aid internal monitoring to improve the quality and consistency of cross-agency arrangements, and for ensuring that deliverables and accountability requirements are met. In combination with periodic monitoring, registers can be used to inform an agency of poor performance under an agreement, its impending succession or the need for review. A well managed register can be a particular asset in agencies that have a large volume of agreements, or where regular review or variation of agreements is required.

33. To improve the overall consistency and transparency of cross-agency arrangements, agencies should consider the effectiveness of their current coordination activities, and strengthen processes as appropriate for their particular situation. This should encompass consideration of the need for formulating guidelines to foster consistency in the development of agreements (also see Chapter 2), as well as taking into account the potential benefits of better monitoring.

# Better Practice Principles

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## Promoting consistent and clear agreements

To provide a suitable basis for building productive relationships between agencies, cross-agency agreements need to be fit-for-purpose, clear in their intent, and well structured. Consistency of form, content, and the processes for developing cross-agency agreements, can enhance the overall quality and usefulness of the agreements, including their interpretation by the collaborating agencies. Better practice principles that aid in achieving these attributes include:

- The content and structure of the agreement should mirror the significance of the task. Include only essential information, written in clear, succinct terms, and make certain that the legal or non-legal basis of the agreement is transparent to all parties.
- While most agreements are likely to be non-legally binding, clearly state any legally binding components of the agreement. Also stipulate where underpinning legislative responsibilities exist, for example, the *Social Security Act 1991*. Seek legal clarification where legal implications or uncertainty exists.
- Clearly indicate the agreed roles, responsibilities and functions to be undertaken by each agency, accompanied by sufficient context to be understood without ambiguity.
- Allocate responsibilities conducive to where lead agency, shared risks or shared accountabilities apply.
- Incorporate sufficient details of service, deliverables, financial arrangements, performance requirements and other key administrative matters (clearly linked, named and dated schedules and attachments to the agreement can be useful for such details).
- Build mechanisms into the agreement for variations and review of schedules and the addition or termination of subsidiary agreements during the life of the agreement, to assist in keeping arrangements accurate, transparent and up to date.
- Clear recognition and documentation of potential risks can help agencies in planning for the management and early resolution of any problems. There is benefit in implementing processes for the early identification of potential operational risks, including shared risks, and to plan appropriate mitigation strategies. Review risks regularly over the life of the agreement by an agreed mechanism.
- Establish sustainable governance mechanisms tailored for the task(s) at hand. The choice of governance arrangements should be based on an assessment of risks, the significance, duration, and size of the program or task, and the resources available. Where committees are established, these should have agreed terms of reference and defined frequency of meetings. As a minimum, all agreements should specify agency contacts and/or an agreement manager.
- To promote consistency and internal quality control, consider implementing agency-wide procedures, advice, training, checklists, a repository and/or agency register for agreements.

## Developing agency guidelines

Agencies can promote the development of better practice agreements by providing their staff with guidance material that is appropriately designed to meet the needs of their agency and promote good public sector governance. Better practice principles that apply to individual agencies are:

- Develop agency policies and guidance material to provide clear direction of the processes for developing, endorsing, and managing cross-agency agreements. Consult with other agencies that may be more progressed in this area and draw on existing guidelines and better practice to determine the extent and content of guidance required.
- Agency guidelines should present details of clearance processes and delegations, situations to seek legal advice, and link to templates or examples of agreements which contain essential provisions for non-legally binding Memoranda of Understanding. Provision of templates and instructions to staff in a readily accessible form will encourage consistency and completeness of agreements.

## Incorporating suitable key provisions

Successful cross-agency agreements clarify the scope and roles and responsibilities of each party, primarily by including key provisions: objectives of the arrangements, including desired outcomes and timeframes; roles and responsibilities; details of the activity, including specification for services or projects; resources and budgetary issues; shared risk management; and agreed dispute resolution mechanisms.<sup>14</sup> However, developing a clear and workable agreement goes beyond simply inserting the above provisions. Better practice involves the clear articulation of sufficient relevant information so that all parties to the agreement understand their objectives, obligations and performance expectations. Useful cross-agency agreements:

- Have clear objectives supported by sufficient context and links to applicable agency and government outcomes, to convey the full scope and significance of the cross-agency arrangements.
- Define achievable performance measures. Ideally these should be aligned to outcomes and deliverables, and specify timeframes and frequency of reporting. It is essential that agencies have the capability to collect and report the necessary data to meet performance requirements under the agreement.
- Have transparent processes and promote sound administrative practices by providing sufficient details of agreed procedures for services and deliverables, financial arrangements, performance requirements and other key administrative matters.
- Include a risk management strategy or plan and assess risks early and throughout the life of the agreement. Identify shared risks and allocate responsibility for the management of these.
- Incorporate a dispute resolution process which has agreed timeframes and a pathway for escalating and resolving issues. The dispute resolution process requires contact points with clearly designated roles in resolution, identification of the final arbiter, and suitable arrangements to ensure that normal work and obligations continue.

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<sup>14</sup> ANAO, *Better Practice Guide—Public Sector Governance*, Guidance Paper No. 7, 2003.



## Establishing effective monitoring and review processes

Monitoring of agency-wide practices, including performance or compliance in a particular administrative function, can provide useful information for improving agency policies and developing better controls and quality assurance procedures.

Better practice for agencies' management of cross-agency agreements includes:

- Implement procedures to monitor the currency and quality of cross-agency agreements.
- To aid monitoring, maintain a register for recording each agreement's location, contact officers, currency, expected review or termination dates. This will help to ensure that agreements are kept up to date, properly endorsed and readily accessible.

Give early attention to aspects of cross-agency agreements that will not be needed immediately, such as review and termination provisions, so that they are not overlooked or compromised later.

- Plan early for a review to occur. Incorporate specification for a review into the agreement: a minimum timeframe of three to five years and more frequently where there are no performance measures or regular reports; and define the nature and mechanism of the review (for example, a review committee). Identify what information (data) is necessary for the review.
- Prepare for termination of the agreement. Develop and agree an exit strategy or succession plan to allow exiting the arrangement without compromising either agency's business or the success of the program or services. This should incorporate options for planned succession or unexpected termination.



## **Audit Findings and Conclusions**



# 1. Introduction

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*This chapter provides an overview of the role of cross-agency agreements and outlines the objectives, scope and method of the audit.*

## Cross-agency collaboration in context

**1.1** An important focus of governments in recent years has been to operate more effectively across organisational boundaries, to strengthen whole of government policy implementation, service delivery, and sharing of information. Resolving complex policy issues—in areas such as climate change, national security, new technologies and research, education and social inclusion, to name just a few—requires Australian Government agencies to work collaboratively with the private sector, stakeholders and each other.

**1.2** Many of the Government's key programs depend on synchronised and collaborative approaches by two or more agencies to achieve the desired results and to measure their impact. The 2004 *Connecting Government* report commented that 'the APS should be striving to create a "culture of collaboration" that aids the sharing of research, experience and expertise in addressing intractable problems.'<sup>15</sup> A 'culture of collaboration' can be seen in many facets of the public sector's operating environment. On a day-to-day basis, officials from different agencies work across organisational boundaries to deliver government services, collaborate in the formulation of national policies, and exchange information and a range of specialist expertise.

**1.3** Given the diverse nature and functions of the Australian Public Service (APS), effective collaboration may depend on building new relationships between agencies that have different operational priorities, cultures, risk profiles, and skill sets. Interdepartmental Committees (IDCs), taskforces, and joint working parties are frequently used to overcome barriers and coordinate cross-agency initiatives. However, in many instances, a formal cross-agency agreement is an important mechanism for establishing and clarifying the way in which agencies work together to implement government policy, exchange essential information, and deliver effective streamlined services

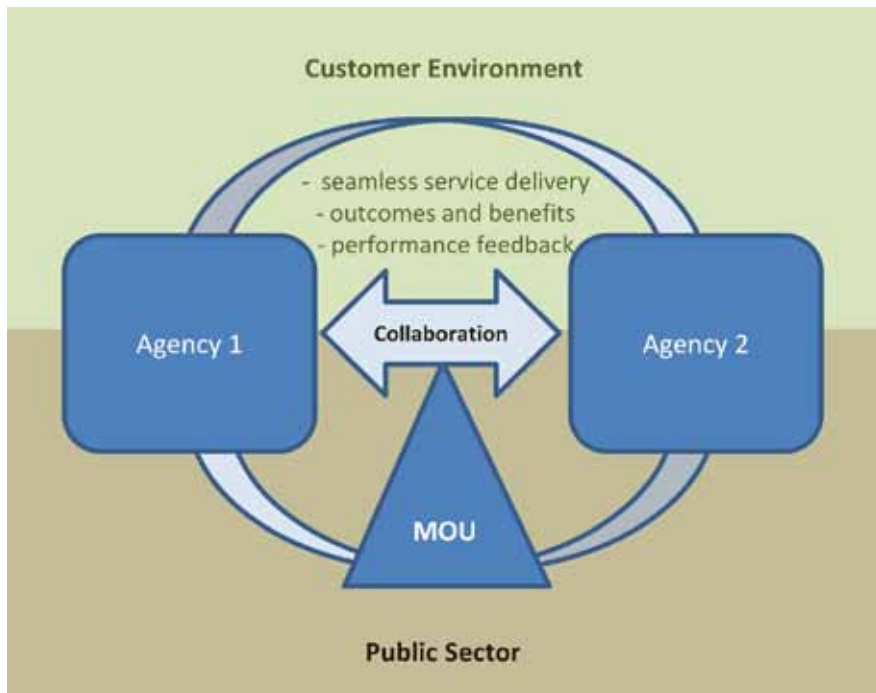
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<sup>15</sup> Management Advisory Committee (MAC) 4, *Connecting Government—Whole of Government Responses to Australia's Priority Challenges*, 2004.

(see Figure 1.1). Such agreements provide the foundation for the interagency relationship, but often change in form and content as the trust and reliability of the relationship matures over time.

**Figure 1.1**

**Use of Cross-agency agreements—Memorandum of Understanding**



Source: ANAO. An example of the use of a cross-agency MOU for service delivery.

**1.4** Common drivers for formalising cross-agency arrangements include:

- the desire to promote a collaborative relationship between parties and demonstrate a commitment to joint work;
- a need for a degree of agency control or assurance in relation to the activities and responsibilities of another party;
- to enhance accountability, transparency, and efficiency; and
- to improve knowledge.

**1.5** In this audit, 21 agencies reported over 1800 current agreements, signifying a breadth of cross-agency activity and interdependencies.

## Key characteristics of cross-agency agreements

1.6 Cross-agency agreements cover a broad range of situations and functions across the public sector, so they tend to be diverse in their purpose, structure, and content—each one tailored to suit a specific situation and range of requirements. An agreement may be represented by a simple Exchange of Letters, a complex MOU, Business Partnership, or a high level Collaborative Head Agreement (Table 1.1).<sup>16</sup>

**Table 1.1**

### Examples of the purpose of cross-agency agreements

Broad purpose of the Agreement	Description and Examples
Deliver services to the public	Services and products delivered by a service agency on behalf of a government policy department, for example, Centrelink's provision of services, including payment of benefits and customer case management, to the Department of Education, Employment and Workplace Relations (DEEWR).
Provide advice or data to another department	Data collection and provision, such as data from Crimtrac provided to the Department of Immigration and Citizenship (DIAC) or DIAC data provided to Centrelink.
Joint program implementation	Whether small or complex, government programs may require the involvement of more than one agency. AusAid and the Department of Climate Change and Energy Efficiency (DCCEE) share oversight for delivering the International Climate Change Adaptation Initiative.
Shared services between two agencies	Provision of corporate services, for example, the Department of Innovation, Industry, Science and Research provision of corporate services to Resources, Energy and Tourism; and ICT services provided by the Department of Foreign Affairs and Trade to other agencies' overseas posts.
Provide expert advice	Australian Bureau of Statistics and the Department of Agriculture Fisheries and Forestry (DAFF) provide expert advice to the Murray Darling Basin Authority; and scientific and technical expertise is provided by Geoscience Australia to DCCEE.
Border security support	Coordination between agencies where legislative roles are interdependent or complementary for national security purposes. For example, coordination of border security functions by Customs and DAFF, or cooperation between the Australian Federal Police and DIAC.
Non-disclosure of information	Non-Disclosure Agreements specifically to protect the security of shared information, for example, new technology or research.

Source: ANAO analysis of agency agreements.

Note: Appendix 3 also contains examples of agreements in some of the above categories.

<sup>16</sup> In practice, memoranda of understanding are often given different names to reflect the focus of the agreement. For simplicity, the term 'cross-agency agreements' is used in this report.

**1.7** Regardless of name or structure, an agreement between Commonwealth agencies is typically non-legally binding because it is between parts of the same legal entity.<sup>17</sup> Consequently, the success of cross-agency arrangements is often dependent on sound relationship management and the professional cooperation of the respective parties. The Department of Finance and Deregulation (Finance) defines basic principles for an effective funding agreement, which aptly apply to cross-agency agreements:

A well-designed funding agreement will also help establish the basis for a constructive and cooperative relationship between the grantor and the recipient, providing clarity of objectives and a shared set of understandings and expectations.<sup>18</sup>

**1.8** While a cross-agency agreement may not be legally binding, there is an expectation that arrangements will be based on sound administrative practices and ethical conduct, with all parties complying with key elements of the Australian Government's governance frameworks. To assist agencies in meeting specified goals and outcomes, the content of agreements needs to support the key principles of program effectiveness, accountability, and transparency. Important in supporting these principles, is the ability of agencies to monitor and communicate progress against program objectives and outcomes, and to improve performance over time.

**1.9** Fundamental requirements for cross-agency agreements include: defining the roles and responsibilities of each party and the goods or services to be provided; implementing suitable governance and communication arrangements; considering shared risks, and incorporating reporting and review provisions.<sup>19</sup> The development of appropriate guidance material and agency controls can also be of great value to agencies, particularly for ensuring the currency, quality and appropriate terms of agreements.

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<sup>17</sup> Agencies that belong to the same legal entity cannot contract with each other. Thus, two FMA agencies would have a non-legally binding MOU or agreement between them. This does not necessarily apply to agreements between Commonwealth agencies where one or more is established under the *Commonwealth Authorities and Companies Act 1997* (CAC Act). ANAO and Finance, *Better Practice Guide. Developing Contracts: Getting the Right Outcome, Paying the Right Price*, 2007, p. 24.

<sup>18</sup> Finance, Financial Management Guidance No.23, *Commonwealth Grant Guidelines. Policies and Principles for Grants Administration*, July 2009, p. 22.

<sup>19</sup> Op cit. ANAO and Finance, 2007, Better Practice Guide p. 24.



## Previous ANAO performance audits

**1.10** The ANAO has not previously conducted a performance audit of cross-agency agreements involving multiple agencies. However, through other audits, the ANAO has examined a large number of individual cross-agency agreements. These audits identified a need for further examination of the general use and management of cross-agency agreements within the Australian Public Service.

## Other reviews

**1.11** The report *Ahead of the Game: Blueprint for the Reform of Australian Government Administration*, released in March 2010, proposes reforms which ‘aim to improve outcomes for citizens, through more integrated services, better policy advice...through changes to systems, structures and practices’. Visions for the future include: an APS-wide focus on capability; effective measurement of the outcomes for whole of government objectives; and consistent quality in the delivery and effectiveness of programs.<sup>20</sup> These reforms include initiatives to bring about improvements in agencies’ capability to commission, manage and realise benefits from projects and programs.<sup>21</sup>

## The audit

### Audit objective and criteria

**1.12** The audit objective was to assess whether agreements between Commonwealth agencies reflect sound administrative practices. The ANAO, therefore, examined whether agreements were fit-for-purpose and consistent with the Government’s administrative frameworks and better practice principles. The assessment included whether agreements were: current and appropriately authorised; contained appropriate provisions; and defined mechanisms for the monitoring and reporting of deliverables.

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<sup>20</sup> Department of Prime Minister and Cabinet, Advisory group on reform of Australian Government Administration, *Ahead of the Game: A Blueprint for the Reform of Australian Government Administration*, March 2010, pp. 63, 74, and 81.

<sup>21</sup> For example the P3M3 assessment process, in which agencies will be required to assess their own capability level.

## **Audit scope**

**1.13** The audit involved a total of 21 Australian Government agencies: 19 Portfolio Departments, Centrelink and the Australian Taxation Office. A full list of the agencies is in Appendix 1. The audit assessed 200 cross-agency agreements and drew on observations and findings from previous ANAO audits. The audit did not include a detailed examination of the programs and services that were the subject of the agreements. While bodies under the *Commonwealth Authorities and Companies Act 1997* (CAC Act) were party to some agreements, the audit scope did not specifically include CAC agencies or contracts between FMA agencies and non-APS providers.

## **Audit method**

**1.14** The audit was conducted under section 18 of the *Auditor-General Act 1997* and in accordance with the ANAO Auditing Standards. It was completed for a total cost of \$240 000.

**1.15** The ANAO reviewed current government policy and a range of better practice guidelines, conducted interviews with agencies and examined cross-agency agreements.

**1.16** Each agency provided a list of current agreements with other Commonwealth agencies and completed a short questionnaire. The ANAO selected 200 agreements for assessment against criteria developed from a range of sound governance principles based on government accountability frameworks and better practice guides. Interviews and verification activities were conducted in eight agencies, to determine the extent and suitability of guidance materials, processes for monitoring the quality and status of agreements, and associated reporting requirements (also see the audit methodology outline in Appendix 2).

**1.17** The ANAO drew together findings from the audit, better practice, and previous ANAO audits to develop better practice principles. These are presented at the end of Chapters 2, 3, 4 and 5.

## 2. Principles and Practice

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*This chapter examines the key principles that underpin effective cross-agency agreements. It is primarily concerned with non-legally binding agreements between Australian Government (Commonwealth) agencies.*

### **Sound administrative practices are integral to cross-agency agreements**

**2.1** A written agreement between two or more Australian Government agencies is a means of gaining mutual commitment to work towards a particular outcome which will benefit the community. Signing a cross-agency agreement is an indication of an agency's intent to carry out the functions and obligations therein. The agreement itself sets out the principles, standards and parameters that participating agencies agree to uphold in their pursuit of meeting particular Government outcomes.

**2.2** As agreements between agencies are usually non-legally binding, relationship management plays an important part in facilitating a collaborative and workable affiliation to meet agreed performance and delivery requirements. Each agency is also subject to the Government's broader accountability standards.

Because the Commonwealth's legislative framework for the governance of its organisations stresses the ultimate accountability of chief executives...joint activities need to clearly identify how such accountability requirements are to be met in the collaborative arrangements...<sup>22</sup>

**2.3** In this context, each cross-agency agreement needs to depict clear lines of accountability, with the responsibilities of the parties aptly identified and duly understood.

**2.4** Many principles of the Government's procurement framework, and better practice in contracting, also apply fittingly to non-legally binding cross-agency agreements: managing risks; relationships and resources; specifying responsibilities; behaving ethically; and keeping records.<sup>23</sup> In particular, early

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<sup>22</sup> ANAO *Better Practice Guide—Public Sector Governance, Guidance Paper No. 7: Cross-Agency Governance*, July 2003, p. 2.

<sup>23</sup> Refer to ANAO and Finance *Better Practice Guide—Developing and Managing Contracts: Getting the Right Outcome, Paying the Right Price*, February 2007, pp. 2–13.

recognition and mitigation of shared risks can have substantial benefits for cross-agency endeavours.

**2.5** The ANAO reviewed a range of agency agreements (200 in total), procedures and related guidance material, to determine whether these reflected the key principles of sound administration. This chapter presents the ANAO's findings, including examples of good practice, in the following areas:

- fit-for-purpose agreements;
- enforceability of cross-agency agreements;
- endorsing and executing agreements;
- accountability and performance; and
- relationship management.

## Fit for purpose agreements

**2.6** Cross-agency agreements are highly variable in their structure and content, due to the breadth of work undertaken by government departments. The structure and detail of an agreement is influenced by the complexity and nature of a program or tasks involved, and the level of risk associated with these. In each instance though, the agreement must be fit for the purpose for which it is intended and presented in an understandable and succinct manner. Agreements that are poorly structured, unclear in their intent, or cluttered with unnecessary information, will have a higher risk of conveying mixed messages and do not inspire good administration.

## Types of agreement used

**2.7** Because the Commonwealth cannot contract with itself, an agreement between two Commonwealth agencies under the FMA Act is a Memorandum of Understanding, and is not legally binding.<sup>24</sup> However, for the agreements examined in this audit, there was no single 'type' of MOU or agreement; as demonstrated by agencies reporting over twenty different types of agreements between FMA agencies.

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<sup>24</sup> Op. cit. ANAO and Finance *Better Practice Guide* 2007, p. 24; also informal discussion between the ANAO and the office of the Australian Government Solicitor, June 2009. Note that agreements between and FMA and CAC body, and FMA and GBF, may be legally binding (see Table 2.2).

**Table 2.1****Types of cross-agency agreements examined in the audit**

Type or name	Common use by agencies
Memorandum of Understanding or Record of Understanding	Generally are non-legally binding agreements between Commonwealth agencies. Cover a wide range and complexity of programs, services and functions. MOUs can be funded (often fee-for-service) or have no funding (operating within each agency's existing resources).
Partnership Agreement (often prefaced by either 'Business', 'Collaborative' or 'Strategic')	Typically set out the requirements for a service delivery agency to deliver services on behalf of a policy department, or for joint implementation of major government policies/programs. Often have protocols attached for specific projects, functions or initiatives.
Collaborative Head Agreement or Head Agreement	Define high-level principles and obligations for a collaborative relationship between two or more agencies, where there is an expectation to undertake future or fund multiple tasks or projects. Often precede the development of subsidiary agreements (or protocols) for specific programs as they are developed and implemented.
Service Level Agreement, Work Level Agreement, Purchaser–Provider Agreement	Agreements with a significant focus on deliverables linked to service standards, performance indicators and timeframes. These may be lengthy and complex documents with extensive product or service specifications (for example, IT services).
Deed of Agreement, Funding Agreement, Funding Deed or Funding MOU	Used when one agency funds another (FMA or CAC), often as a grant, to undertake project work on their behalf (the funder). These agreements tended to be legally structured documents.
Exchange of letters	Usually a short communication to seek agreement on a specific task or function of limited scope in terms of cost, risk and/or duration. Frequently used to arrange the exchange of data or specialist services, to extend an existing agreement, or to seek agreement on a variation to an agreement.

Source: ANAO analysis.

Notes: This is not an exhaustive list. From the ANAO's sample of 200 agreements over 20 different types were encountered, allowing for grouping of closely similar names (for example, service agreement and service level agreement). Just over half the agreements were referred to as MOUs.

**2.8** Although agencies choose to use different names (types) for an agreement to convey its purpose, the name does not always infer the legal status of the agreement or predetermine a specific format or content. For example, one agency may call a MOU a 'service level agreement' to reflect that it precisely documents minimum standards of service to be delivered, or a 'Record of Understanding (ROU)' because this is the particular preference of the agency.

**2.9** For the most part, the agreements reviewed can be considered MOUs as their prime purpose is invariably to facilitate cross-agency collaborations or relationships of one form or another, and they are indicatively non-legally binding in their intent and content.

## Structure and detail of the agreements

**2.10** The range of agreements across the APS is not only diverse in terms of name and purpose (see Tables 1.1 and 2.1); the number of different approaches to structure and detail (content) of the agreements is equally variable. The 200 agreements examined by the ANAO ranged in size from one to 350 pages. Some were necessarily lengthy, for example, detailed service delivery arrangements for multiple programs, or large IT service level agreements between departments. However, in several instances agreements contained excessive information that was neither relevant nor helpful in understanding the arrangements. At times, this appeared to be due to the use of agreement templates without appropriate tailoring to fit specific needs (see Chapter 3).

**2.11** Given their non-legally binding status, agreements between Commonwealth agencies are expected to use simple language—avoiding the legal terminology and instruments typically found in formal contracts, such as references to indemnities and warranties. Almost 10 per cent of the 200 agreements examined in the audit had included these types of clauses.

**2.12** The most usefully structured and understandable agreements:

- were written in plain English;
- gave clear objectives, roles and responsibilities, and included concise but informative contextual information (such as background to the program and its relevant to broader government initiatives and outcomes);
- contained clearly marked schedules (or other attachments) providing sufficient details of services, deliverables, financial arrangements, performance requirements and other important administrative matters;
- were specific about their legal basis, both in terms of the legislative context and requirements of the program and/or tasks, as well as the legal standing of the agreement itself;
- explained how the agreement was linked to other supportive documents and any sub-agreements (such as MOUs, business protocols or Service Level Agreements) to the overarching agreement.

**2.13** Many larger agreements consisted of several parts. A useful practice in these cases is to list all parts, subsidiary agreements, protocols and attachments, in the main agreement. In several instances, Head Agreements or overarching MOUs were established first, with subsidiary agreements added

later, as they were developed. While this is acceptable practice, the following steps can improve the clarity and accessibility of agreements:

- define which document or particular clauses take precedent;
- check for contradictory information when drafting new sub-agreements;
- provide a schedule or attachment, updated periodically as more agreements or protocols are added;
- ensure that subsidiary agreements clearly indicate which overarching agreement they sit under; and
- be able to track and readily access all relevant documents when required (for example for review or audit purposes).

## Enforceability of cross-agency agreements

**2.14** As non-legally binding agreements between parts of a single legal entity, cross-agency agreements would not normally contain enforceable rights or obligations. Rather than relying on the imposition of penalties to deter poor performance, cross-agency agreements are based on an expectation that the parties can be trusted to act ethically and honour their commitments.

Even though MOUs do not have the same legal status as contracts, entities should manage MOUs with the same degree of rigour as they manage contracts. As MOUs between agencies are administrative and distinct from legal instruments, they should not include provisions such as indemnities, liabilities and warranties that purport to have legal effect.<sup>25</sup>

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<sup>25</sup> Op. cit. ANAO and Finance, Better Practice Guide, 2007, p. 24.

**2.15** The User Guide to the National Collaborative Framework (NCF) Collaborative Head Agreement (CHA) and Project Agreements outlines the possibilities for legal enforceability:

A CHA and any accompanying Project Agreement can not be legally binding between agencies which do not have a separate legal status from each other. Some examples include:

- (a) An Australian Government Department and another Australian Government Department; or
- (b) A State/Territory Department and another Department of the same State/Territory.

However, if the Parties or Project Parties are separate legal entities (for example, a Commonwealth Department and a State/Territory Department or a Commonwealth Department and a Commonwealth Authority established under the Commonwealth Authorities and Companies Act 1997 (Cth)), they may elect to make the CHA and/or Project Agreement legally binding.

Source: *User Guide. National Collaboration Framework: Collaborative Head Agreement; Project Agreements*, December 2008, p. 9.

**2.16** Table 2.2 summarises the relationships between different Australian Government (Commonwealth) agency types.

**Table 2.2**

**Legal status of agreements between different Commonwealth agencies**

Commonwealth parties	Legal status	Example of purpose
Portfolio Department (FMA) and Portfolio Department (FMA)	Non-legally binding	Multi-agency policy development or program implementation. Attorney-General's Department and the Department of Families, Housing, Community Services and Indigenous Affairs share responsibility for the Family Relationships Services Program.
Portfolio Department (FMA) and Statutory agency (FMA)	Non-legally binding	Provision of shared services or joint program development. Centrelink delivery of services to the public on behalf of the Department of Health and Ageing.
Portfolio Department (FMA) and Statutory agency (CAC Act body)	May be legally binding (in part or full)	Funding of specialised technical centre or specialist data generation. CSIRO supply climate data to the Department of Agriculture, Fisheries and Forestry to estimate future forest growth.
Portfolio Department (FMA) and Government Business Entity (GBE—CAC Act)	May be legally binding	Procurement of specialist services, funding of projects, or national security related functions. Customs, the Department of Agriculture, Fisheries and Forestry, and Australia Post (a Government Business Enterprise—GBE) coordinate to facilitate effective border protection and mail delivery.

Source: ANAO, based on advice published by Finance, 2003, *Financial Management Guidance No.6, Guidelines for Issuing and Managing Indemnities, Guarantees, Warrantees and Letters of Comfort*, pp. 9–10; and op. cit. National Collaboration Framework 2008, p. 9.



**2.17** The clarity of cross-agency arrangements can be markedly improved by including a statement of whether or not an agreement is legally binding (in full or in part, and which parts).<sup>26</sup> This clarity is necessary for helping to establish the expectations and perceptions of each signatory agency.

**2.18** Table 2.3 shows clauses used by some agencies to emphasise the non-legal position of specific cross-agency agreements. Less than 40 per cent of agreements examined in the audit included such a statement or indicated the legal intention of the agreement.

**Table 2.3**

**Statement of a non-legally binding agreement**

Example taken from cross-agency agreements examined by the ANAO	
Example 1	'This MOU is not intended to create legal relations between the Agencies. However, the Agencies regard their undertakings entered into under this MOU as a serious commitment and will use their best endeavours to fulfil their respective obligations.'
Example 2	'This MOU is an administrative arrangement only. It is not the intention of the Parties that this MOU establishes a legally binding enforceable agreement between the Parties.'
Example 3	* '[The agencies] acknowledge that they are part of the same legal entity, the Commonwealth of Australia. The intent of the Parties is to adhere to this MOU.'
Example 4	* 'The purpose of this Agreement is to establish a strategic relationship to deliver mutually agreed outcomes.'

Source: ANAO, sourced from various agency agreements.

Note: \* Examples 3 and 4 are increasingly less clear in defining the legal intent of the cross-agency agreement, compared to the first two examples.

**Endorsing and executing the agreement**

**2.19** An important step in establishing a formal cross-agency arrangement, is the endorsement (or sign-off) of the agreement itself. Through signing the agreement, agencies indicate their commitment to work collaboratively and according to the specified arrangements, towards the agreed goal or outcome. Failure to sign an agreement can indicate a lack of commitment from one or more parties, or dissatisfaction with some aspect of the agreement.

<sup>26</sup> ANAO analysis of 200 agreements.

**2.20** Following appropriate negotiation, the endorsement of minor or less significant agreements is usually a straightforward and simple matter, with both parties and witnesses signing and dating the document. It is good practice for the titles of the signatories to be included, as:

- for compliance purposes it may be necessary for individuals unfamiliar with the agreement or the agency to check delegations, and the appropriateness of the level of sign-off (for example, internal or external auditors);
- over the life of the program, there may be new managers who need to be aware of the level of importance of an agreement and which executive position has ultimate responsibility within their agency.

**2.21** Where a major government initiative is involved, particularly if large sums of public money are being invested, agencies may require a signing ceremony, public announcements or involvement of ministers. Such agreements involve a higher public profile, and additional care is required in preparing documentation that is correct and endorsed at the appropriate agency level.

**2.22** The ANAO assessed the 200 agreements to determine if their endorsement was appropriate and complete. For the most part, agencies' performance in this area was satisfactory, with 91 per cent of the agreements signed and 76 per cent correctly dated. In 46 per cent of the agreements it was unclear whether signing occurred before or after the agreement start date, because either the start date was not clearly recorded or the signature blocks were undated.<sup>27</sup>

**2.23** Several sound practices were apparent during the audit (shown in Table 2.4). These contribute to overall knowledge within the organisation and assist in streamlining the development, endorsement and tracking of agreements.

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<sup>27</sup> The ANAO did not assess the agreements for currency per se, as only current agreements were requested from agencies. However, it was evident that some agreements were not current and/or had been extended pending re-negotiation.

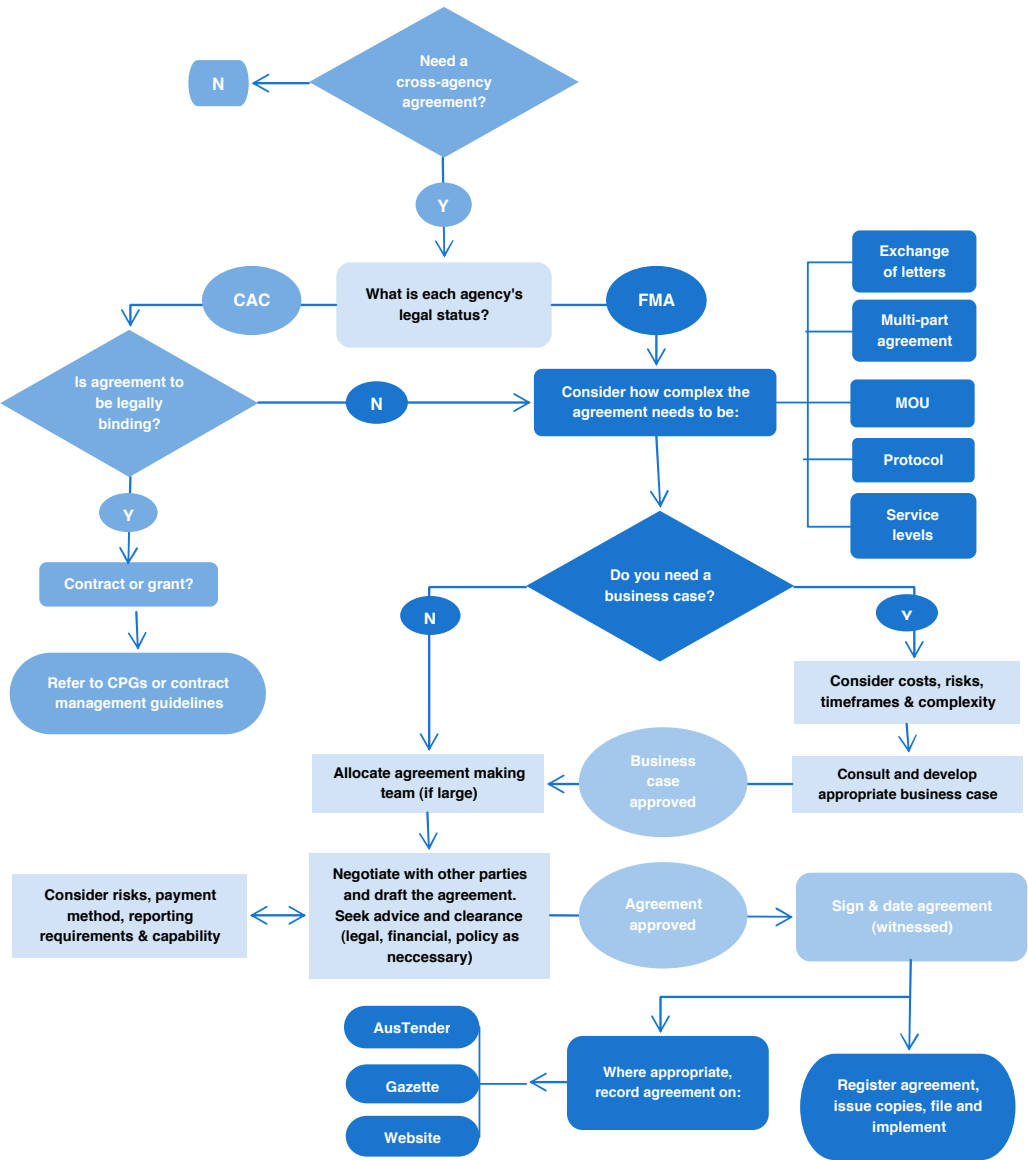
**Table 2.4****Examples of good practice used by agencies**

	Useful practices
Procedures	Providing procedures and agency policies to staff through the agency's intranet or shared drives, to assist in the development and management of cross-agency agreements.
Advice	Procedures include details of where staff can go for help, for example, legal services or local procurement unit.
Training	Training for staff in agencies that frequently develop MOUs or where they are complex. Regular scheduling of training, for example, annually.
Checklists	Using a checklist for the clearance process which requires final sign-off prior to signing of the agreement.
Central repository	Having a central repository (this could be electronic) for filing signed agreements.
Register of agreements	Recording and monitoring agreements through an agency register (see Chapter 5)—for example, to ensure availability for review or compliance activities.

Source: Compiled by the ANAO following consultation with several of the audited agencies.

**2.24** An example of a suitable process for the development, clearance and endorsement of cross-agency agreements is shown in Figure 2.1. This is not intended to be definitive advice, as agencies will each need to refine the process to suit their own situations.

**Figure 2.1**  
**Example: Development, clearance and endorsement process**



Source: ANAO, adapted from information provided by the ATO, better practice guides and the Commonwealth Procurement Guidelines (CPGs).

## Accountability and performance

**2.25** Cross-agency agreements provide a foundation for sharing a range of government services and expertise: from simple sharing of data, to complex implementation of social reform agendas across multiple agencies. In meeting individual agency and joint obligations under cross-agency arrangements, Secretaries and CEOs are expected to provide assurance that their agencies comply with relevant legislation and key elements of the Australian Government's governance and accountability frameworks (see Table 2.5). This includes taking a performance-oriented approach to joint arrangements and making sure that signatories to the agreement have the organisational capacity to measure performance.

**2.26** These elements of good governance will support the key principles of accountability, transparency and program effectiveness and ultimately assist agencies in meeting Government outcomes.

Accountability is the process whereby public sector organisations, and the individuals within them, are responsible for their decisions and actions...and submit themselves to appropriate external scrutiny. It is achieved by all parties having a clear understanding of those responsibilities, and having clearly defined roles through robust structure. In effect, accountability is the obligation to answer for a responsibility conferred. This responsibility extends across a range of concerns, including probity and ethics as well as the effective and efficient implementation of programs...<sup>28</sup>

**2.27** Many of the principles of the Government's contracting framework apply to non-legally binding cross-agency agreements: managing risks, relationships and resources; specifying responsibilities; behaving ethically; and keeping records.<sup>29</sup> In the absence of guidelines specific to MOUs, contracting guidelines can usefully inform good practice in cross-agency arrangements.

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<sup>28</sup> ANAO *Better Practice Guide—Public Sector Governance* Volume 1, 2003, p. 8; and referenced from R Mulgan, *The Process of Public Administration*, in *Australian Journal of Public Administration*, 1997, 56(1), pp. 25–36.

<sup>29</sup> Refer to ANAO and Finance *Better Practice Guide—Developing and Managing Contracts: Getting the right outcome, paying the right price*, February 2007, pp. 2–13.

**Table 2.5****Components of government accountability frameworks**

Legislation/Policy	Relevance
<i>Public Service Act 1999</i>	Sets out the values of the APS and the APS Code of Conduct; sets standards of open accountability, ethical behaviour and probity.
<i>Auditor-General Act 1997</i>	Subjects all Australian Government organisations to audit scrutiny by the Auditor-General, an independent officer of the parliament.
<i>Financial Management and Accountability Act 1997 (FMA Act)</i>	A key part of the Australian Government's framework for proper management of public money and property. Outlines Chief Executives' special responsibilities to promote the efficient, effective and ethical use of the Commonwealth resources.
<i>Commonwealth Authorities and Companies Act 1997 (CAC Act)</i>	Regulates facets of Commonwealth authorities' financial affairs and sets reporting and accountability rules. For Commonwealth Companies, adds reporting and other requirements to those in the <i>Corporations Act 2001</i> .
Chief Executive's Instructions (CEIs)	Give agency officials detailed operational guidance on financial management, including spending public money. CEIs promote the proper use of, and accountability for, Commonwealth resources and are authorised under FMA Regulations 1997, regulation 6.
Commonwealth Procurement Guidelines (CPGs)	Set out the Government's procurement policy framework and promotes the core principle of seeking value for money, encouraging accountable and transparent decision-making. The Minister for Finance issues CPGs for procurement of goods and services under regulation 7 of the FMA Regulations 1997.
Government Outcomes Statements Policy	Agencies include outcome statements in their Portfolio Budget Statements. Outcome statements express Government objectives. They also: explain the approved purposes for agencies' annual appropriations; provide a basis for budgeting and reporting; and outline how to measure and assess performance in contributing to Government policy objectives.
Administrative Arrangements Orders (AAOs)	AAOs set out which matters and legislation are administered by which department or portfolio. AAOs are re-issued or amended to take into account changes in the structure of Government. <sup>30</sup>
Program-specific legislation	Provide a legislative basis for implementation of specific policies, grants, services and systems.
Risk management (AS/NZS ISO 3100: 2009)	Sets out a framework for risk management and gives guidance for organisations on establishing and implementing effective risk management processes.

Source: Compiled by ANAO.

Note: This is not intended to be a definitive list.

<sup>30</sup> National Archives of Australia, accessed 15 March 2010 <<http://www.naa.gov.au/records-management/publications/AAOs.aspx>>

**2.28** While accountability and performance issues may be easily managed under simpler agreements, the multifaceted and complex nature of many large cross-agency agreements poses difficult challenges. Here, issues such as recognising shared accountabilities and shared risk management are important. Attributing responsibility for accountability and the management of risks will depend on the nature of the agreement and its management structure. For example:

- whether a lead agency is identified;
- how the cross-agency business is being funded, and whether there are specific legislative or policy obligations for each party; and
- the role of key governance bodies (such as steering committees) or Executive management groups.

**2.29** In the 200 agreements examined, individual agency roles and responsibilities were generally covered. Few agreements had specified a lead agency; many having no strategic or business need to do so. There were, however, instances where the recognition of a lead agency would have added clarity to the intended dynamics of the inter-agency relationship. A useful approach evident through some agreements was to allocate a lead agency at the individual task or responsibility (role) level. Where also linked to performance standard or measures, this provided a high level of clarity to optimise understanding by all parties.

## **The management of shared risks**

**2.30** Consideration of risk, particularly the management of shared risk, is advisable throughout the development, implementation and review stages of a cross-agency arrangement. The degree to which this is done will depend on the significance and potential impact of the tasks designated under the agreement, including the complexity, timeframes and level of funding involved.

Implementation initiatives that involve...partnerships, face increased dimensions and complexity of risk management. It is important to ensure that there is a common understanding of the risks associated with shared implementation. This requires that the senior responsible officer is assured of both their own agency's capability to assess and manage key risks and that of other parties. A clear and agreed identification of who carries which risks, including those that are shared, is a necessary part of this. This applies not only to identifying and assigning responsibility for risk, but also to active management, monitoring and reporting through implementation. This may well require consolidated reporting of the effectiveness of risk mitigation.

Source: ANAO and the Department of Prime Minister and Cabinet, 2006, *Better Practice Guide, Implementation of Programme and Policy Initiatives*, p. 20.

**2.31** With shared risk, the application of the basic principles of risk management to the development, subsequent management and succession of agreements is important, and should follow practices similar to those applied in government contracting.<sup>31</sup>

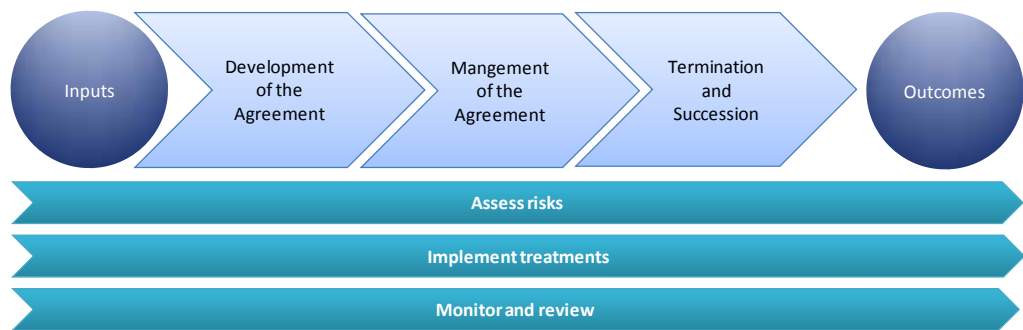
**2.32** Shared risks can be internally or externally generated, but generally fall into two categories:

- risks associated with delivery of the service or program; and
- risks associated with management of the contract.

**2.33** Especially for large cross-agency programs, early identification, analysis, treatment, monitoring and documentation of shared risks is best done from the early stages of negotiating the agreement (Figure 2.2). This will assist in reducing the impact of risk on program implementation and support all parties to reach the desired outcome.

**Figure 2.2**

**Managing shared risks**



Source: ANAO.

**2.34** The ANAO examined 200 cross-agency agreements for specifications regarding the risk management practices. Less than one third of these agreements indicated the responsibilities or arrangements for shared risk management. In a few cases, however, agency and shared risks were outlined in matrix fashion against specific tasks. This was particularly effective.

<sup>31</sup> ANAO Better Practice Guide—*Developing and Managing Contracts: Getting the right outcome, paying the right price*, February 2007, pp. 18–19, 51, 66, 73, and 101.



**2.35** Some agreements indicated an intention of agencies to consider risks, or to the future development of a risk management plan. This approach can fall short in meeting the principle of assessing potential risks early and developing contingencies for possible problems.

## **Efficiency and value for money**

**2.36** Section 44 of the FMA Act requires agency Chief Executives to promote the efficient, effective and ethical use of the Commonwealth resources for which they are responsible. Chief Executives mainly discharge this responsibility by ensuring that their agencies have appropriate policies, procedures and guidelines in place to achieve value for money in procurement and related processes.

**2.37** These principles of value for money and efficiency also apply to cross-agency activities. As such, it is helpful if cross-agency agreements include provisions and management mechanisms which will promote the effective use of resources. While more than 70 per cent of the 200 agreements examined referred to financial arrangements, the ANAO noted that a substantial proportion contained minimal information, often lacking actual funding amounts or clear indication of:

- whether the agreement was funded or unfunded. For some agreements this was inherently apparent, but for others it was not clear;
- the source of funding, for example, which agency was providing the funding and how this was to be administered;
- the process for funding variations to the agreement; and
- where agencies were to provide their own resources.

**2.38** Inclusion of the costs associated with a cross-agency function or initiative would generally improve the transparency of agreements. Without this information, the substantial nature of some agreements is not apparent. At an operational level, greater visibility of costs in the agreements may be useful in increasing awareness around accountability and efficiency obligations. Where these specifications were included, the context, financial obligations and overall clarity of the agreements was significantly enhanced.

## Performance indicators

**2.39** Measurement of performance is also an important mechanism for determining the success of cross-agency initiatives and value for money. Performance indicators with clear links to outcomes are particularly valuable.<sup>32</sup> Thirty-four per cent of the agreements examined included performance indicators.<sup>33</sup> Twenty per cent indicated high level or intermediate outcomes, and 60 per cent contained reporting arrangements.

**2.40** Overall, the specification of performance indicators ranged from extremely thorough to nil. Notwithstanding that some agreements were of a particularly minor nature, and did not warrant inclusion of performance measures, there is room for improving this in many agreements (also see Chapter 4).

**2.41** An aspect of performance measures examined by the ANAO in past cross-agency audits is that of reciprocal performance indicators. This principle basically recognises that one agency's ability to perform work often depends on the timely action or delivery of policy or other tangible material by the partner agency. Performance measures should recognise such interdependencies. The ANAO's examination of agreements indicated that most large-scale agreements were (in one way or another) addressing this issue (see example in Table 2.6). This analysis was less applicable to small agreements, as the interdependency between agencies was often not apparent through the agreements or not significant.

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<sup>32</sup> ANAO and Finance, *Better Practice Guide. Better Practice in Annual Performance Reporting*, 2004, pp. 8 and 10.

<sup>33</sup> Of the 200 agreements reviewed by the ANAO, 43 (22 per cent) were assessed as not requiring performance indicators or service standards. For the remaining 157 agreements, 68 (43 per cent) included performance indicators and/or service standards.

**Table 2.6****Case study: The use of reciprocal performance measures**

The ANAO Performance Audit Report No.4, 2008-09, *The Business Partnership Agreement [BPA] between the Department of Education, Employment and Workplace Relations (DEEWR) and Centrelink*, noted that the existing performance framework between the agencies did not fully recognise their interdependence, particularly Centrelink's dependence on DEEWR, for example, to provide policy interpretation and clarification. Recommendation 4 of the ANAO report was that the agencies incorporate reciprocal accountability measures of DEEWR's performance in meeting its agreed responsibilities under the BPA.

In late 2009, the Department of Human Services (DHS)/Centrelink and DEEWR signed a new Bilateral Management Arrangement (BMA), which replaced the former BPA. The BMA contains a Confidence Framework designed to strengthen the interagency relationship, and Key Performance Measures (KPMs) to provide Bilateral Assurance. In addition to Centrelink-specific KPMs, under KPM 1: Policy Integration, DEEWR is to provide DHS/Centrelink with accurate, timely and clear policy advice to assist Centrelink to meet its KPMs. In addition, under the previous BPA, Centrelink provided an annual assurance statement to DEEWR. This has been improved under the BMA, with the head of each agency required to provide the other with an annual statement of achievement in accordance with the Confidence Framework.

Source: ANAO, Performance Audit Report No.4, 2008-09; and DHS/Centrelink and DEEWR Bilateral Management Arrangement (BMA) 2009.

## Relationship management

**2.42** The manageability of a cross-agency arrangement is often dependent on skilful negotiation and the early establishment of communication channels. The degree and type of risk will often be strong factors in deciding the level and extent of governance arrangements for a particular cross-agency initiative.

**2.43** The management of minor cross-agency agreements usually involves simple coordination arrangements, sufficient to ensure that the obligations of the parties are met. For more complex initiatives, multilevel governance arrangements are often necessary.

Governance arrangements need to match the scale, nature and complexity of the task or activity...A key determinant is the extent to which the activity falls primarily within the province of one agency or falls more or less evenly across two or more agencies.<sup>34</sup>

**2.44** The appointment of an appropriately skilled agreement manager is often vital for the workability of an inter-agency relationship. Almost all cross-agency agreements specified contact officers and/or agreement managers, and in many cases this served as the main avenue of communication for matters under the agreement.

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<sup>34</sup> Op cit. ANAO 2003, *Public Sector Governance, Guidance Paper No.7*, p. 2.

## Coordination and governance arrangements

**2.45** The complexity of governance and coordination arrangements for cross-agency agreements varies on a case by case basis. However, regardless of the structures and processes put in place, these arrangements should be sustainable and complement the intent of the cross-agency initiative or function. Examples of governance arrangements used successfully by agencies are given below.

**Table 2.7**

### Examples of arrangements for cross-agency governance

Type of governance arrangement	Example of agreement
Executive level Inter-Departmental Committee and supporting committee hierarchy	Multilateral Strategic Partnership between DHS/Centrelink and DEEWR and FaHCSIA: A Strategic Partnerships Inter-Departmental Committee (IDC) governs the partnership and operations. IDC agency representation is at Secretary/CEO level and members report to each other quarterly, with biannual reporting to Ministers.  Complementary Bilateral Management Committees (BMCs) are established between DHS/Centrelink and FaHCSIA (and separately with DEEWR) to oversee monitoring and program implementation. The BMC members are at deputy secretary/CEO level; it meets quarterly and informs, and is advised by, the Strategic Partnerships IDC. Each party's Relationship Managers meet at least quarterly, reporting to the BMC.
Multi-jurisdictional committee	Agreement between the ATO, Treasury and each of Australia's state/territory Treasuries – the National Tax Equivalent Regime (NTER). Under this MOU a Heads of Treasuries Working Party on the NTER oversees all aspects of the MOU. It is chaired by the Commonwealth Treasury.
Tripartite management group	MOU between DAFF (AQIS), Customs and Australia Post: A National Tripartite forum deals with policy and procedural matters. National representatives meet regularly at the regional and national level to discuss issues and promote cooperation.
Designated agreement managers	An agreement between DIAC and the ATO for the exchange of data to locate people in Australia unlawfully: The agreement specifies Relationship Managers who are responsible for 'overall performance of the agreement'. This is a frequently used mechanism, especially for small to medium and/or low risk cross-agency arrangements.

Source: ANAO, from various agency agreements.

**2.46** Of practical importance in setting up governance arrangements for cross-agency tasks, is finding a balance between the benefits of the governance arrangement and the resources required to sustain the arrangements. Governance structures can become unwieldy, sapping resources while resulting in few management benefits. Having too many committees and sub-committees can slow down reporting and the progression of important issues.

**2.47** Assessing agency needs is preferably predicated by consideration of the significance of the program, level of financial commitment, difficulty of the task, competing priorities, timeframes and risks. A cross-agency arrangement is more likely to become untenable or unsatisfactory if there is an excessive and unwarranted administrative burden on one or more of the agencies or insufficient regard to 'red tape' (see Table 2.8). The key is in deciding on the correct balance for the given situation, rather than basing governance arrangements indiscriminately on prior examples or experience.

**Table 2.8**

### **Reducing red tape**

Although not directed at cross-agency agreements, the MAC report, *Reducing Red Tape in the Australian Public Service* (2007) provides a general framework for regulatory and administrative requirements that can be appropriately applied to cross-agency agreements.

The report defines red tape as 'regulatory or administrative requirements that are unwarranted, ineffective or not the most efficient option for delivering the required outcome.' The framework centres on three high-level principles, which are that requirements:

- effectively address the issue of concern—that is, requirements should achieve objectives;
- are the most efficient option—requirements should impose the least administrative burden necessary to achieve the intended objective; and
- have benefits that substantially exceed their costs.

Source: Management Advisory Committee (MAC), *Reducing Red Tape in the Australian Public Service*, 2007, pp. 1, 5, 6 and 11.

## Better Practice

### Promoting consistent and clear agreements

To provide a suitable basis for building productive relationships between agencies, cross-agency agreements need to be fit-for-purpose, clear in their intent, and well structured. Consistency of form, content, and the processes for developing cross-agency agreements, can enhance the overall quality and usefulness of the agreements, including their interpretation by the collaborating agencies. Better practice principles that aid in achieving these attributes include:

- The content and structure of the agreement should mirror the significance of the task. Include only essential information, written in clear, succinct terms, and make certain that the legal or non-legal basis of the agreement is transparent to all parties.
- While most agreements are likely to be non-legally binding, clearly state any legally binding components of the agreement. Also stipulate where underpinning legislative responsibilities exist, for example, the *Social Security Act 1991*. Seek legal clarification where legal implications or uncertainty exists.
- Clearly indicate the agreed roles, responsibilities and functions to be undertaken by each agency, accompanied by sufficient context to be understood without ambiguity.
- Allocate responsibilities conducive to where lead agency, shared risks or shared accountabilities apply.
- Incorporate sufficient details of service, deliverables, financial arrangements, performance requirements and other key administrative matters (clearly linked, named and dated schedules and attachments to the agreement can be useful for such details).
- Build mechanisms into the agreement for variations and review of schedules and the addition or termination of subsidiary agreements during the life of the agreement, to assist in keeping arrangements accurate, transparent and up to date.
- Clear recognition and documentation of potential risks can help agencies in planning for the management and early resolution of any problems. There is benefit in implementing processes for the early identification of potential operational risks, including shared risks, and to plan appropriate mitigation strategies. Review risks regularly over the life of the agreement by an agreed mechanism.
- Establish sustainable governance mechanisms tailored for the task(s) at hand. The choice of governance arrangements should be based on an assessment of risks, the significance, duration, and size of the program or task, and the resources available. Where committees are established, these should have agreed terms of reference and defined frequency of meetings. As a minimum, all agreements should specify agency contacts and/or an agreement manager.
- To promote consistency and internal quality control, consider implementing agency-wide procedures, advice, training, checklists, a repository and/or agency register for agreements.

## 3. Guidelines

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*This chapter examines the guidance material currently available to agencies for developing and clearing cross-agency agreements.*

**3.1** As previously mentioned, agreements between Australian Government agencies are typically non-legally binding, as the agencies are part of the same legal entity—the Commonwealth.<sup>35</sup> While there are comprehensive Commonwealth Procurement Guidelines for contracting with external third parties, no single policy is available to aid Commonwealth agencies when developing and entering into cross-agency agreements. In practice, the information available for developing cross-agency agreements is limited, but includes:

- the National Collaboration Framework (NCF) agreement templates and user guide from the Department of Finance and Deregulation (Finance);
- Finance and ANAO guidance;
- legal advice (Australian Government Solicitor, private legal firms, agencies' internal legal sections); and
- policies and guidance developed internally by agencies.

**3.2** The ANAO assessed the usefulness of the guidance material and the extent to which agencies utilised this in developing their agreements.

### National Collaboration Framework

**3.3** The National Collaboration Framework (NCF) is a centrally available resource that was developed to help agencies develop cross-agency agreements.<sup>36</sup> The NCF template includes a wide range of useful provisions (see Table 3.1).

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<sup>35</sup> There may be instances where agreements between Australian Government agencies and CAC Act bodies can be made legally binding in part or full.

<sup>36</sup> The NCF was originally named the National Service Improvement Framework (NSIF).

**Table 3.1**

## **The National Collaboration Framework**

Development of the National Collaboration Framework (NCF) was instigated in 2002, and funded, by the 10th Online Council (online Ministers representing all Australian jurisdictions).

The NCF was developed with a service delivery focus to facilitate projects requiring collaboration within and between all levels of government. The NCF is a suite of documents and tools to assist agencies through collaborative processes.<sup>37</sup> The NCF includes templates for a Collaborative Head Agreement and supporting Project Agreements and is available from the Department of Finance and Deregulation (Finance).

The NCF templates were developed so that agencies could adapt them to meet their needs. They include a wide range of provisions, many of which are listed below, although not all are required for every agreement.

- objectives
- duration
- review of agreement
- relationship between the parties
- services to be provided and standards
- roles and responsibilities
- statement of legal status
- governance arrangements
- project creation and management
- branding
- accounting
- data quality and management
- privacy and confidentiality
- security
- risk and issues management
- withdrawal, discharge, termination and expiry
- problem resolution
- project contributions
- change management
- stakeholder consultation
- training and skill levels
- performance management
- complaint and query handling
- management reporting
- audit management
- intellectual property rights
- communication management
- project implementation review

The NCF was reviewed and updated in December 2008. It is accessible from: <<http://www.finance.gov.au/e-government/service-improvement-and-delivery/national-collaboration-framework/about-ncf/ncf-tiers.html#tier3>>

Source: Finance, *National Collaboration Framework Collaborative Head Agreement*, December 2008, p. 7.

**3.4** Twelve of the 21 audited agencies reported using the NCF framework within the last three years, a further six never used it, and three did not know. Overall, agency awareness of the NCF framework was not particularly high amongst this group of agencies. In part, this may be due to the framework's profile, including that it is not easy to locate on Finance's website.<sup>38</sup>

**3.5** Some agencies had directly copied the NCF template into their agreements, rather than tailoring it to their specific needs. This led to

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<sup>37</sup> Finance, *National Collaboration Framework Collaborative Head Agreement*, December 2008, p. 7.

<sup>38</sup> ANAO questionnaire conducted in 21 agencies.



unnecessarily lengthy agreements that lacked clear focus and contained superfluous template attachments (often left blank).

**3.6** While the NCF templates are a useful resource, agencies need to exercise greater discretion in how they use these to best effect.

## Legal advice

**3.7** Agencies frequently do not require legal advice or clearance to be sought on every agreement. The degree of legal advice and/or clearance required may be dependent on several factors, for example:

- the materiality, funding and level of risk inherent in the project or program initiative;
- whether the agreement is new or based on a previous version, template, or a similar agreement;
- the non-legal or legally-binding nature of the arrangement being entered into, and the type of agency (for example, FMA Act or CAC body);
- the nature and history of the relationship between the parties;
- the level of experience or confidence of officers responsible for negotiating and developing the agreement; and
- CEO instructions, internal guidance and clearance procedures.

**3.8** Seeking legal clarification during the development phase, or including a legal clearance step into the agreement process, can help to assure signatories that the agreement is robust. Sources of legal advice available to agencies include internal legal or contract management units, where available, but private legal firms and the Australian Government Solicitor are also used. Table 3.2 provides examples of where legal advice can be useful.

**Table 3.2**

**Seeking legal advice**

**While not all cross-agency agreements will need legal advice, legal expertise is useful for:**

- ensuring the draft agreement is consistent with, and reflects, applicable laws, or example, FOI Act 1982;
- checking the legal status of the parties in relation to each other (for example, CAC Act body to FMA agency) and the effect on the legal status of the agreement;
- appropriate and sufficient Intellectual Property provisions;
- appropriate dispute resolution provisions;
- accurate definitions; and
- appropriate general use of language in the agreement (for example, reference to clauses; activities that could affect long-term or repeat contracting or legal policy).

Source: ANAO.

Note: This is not intended to be a definitive list.

**3.9** The ANAO asked agencies to clarify whether their internal legal areas were consulted or required to clear agreements. Verification of legal clearance was also requested for a small number of agreements (see Table 3.3).

**Table 3.3**

**Legal clearance of agreements**

**ANAO Question: Which parts of your agency are required to approve new or revised cross-agency agreements?**

Agency area:	Always	Sometimes	Other
Internal legal area	10	9	2

**Legal clearance:**

- nine reported that they sometimes required legal clearance, with variation determined by factors such as whether the agreement was being modelled on another that had previously received legal clearance; and
- of the other 2 agencies, one advised that the question was not applicable, and the other advised that they sought advice but not clearance.

**Further discussions with ten agencies found that:**

- 5 of the 10 agencies had instructions or guidelines defining situations in which legal clearance of agreements must be sought; and
- for 4 of the agreements tested where agencies had originally advised that legal clearance was sought, the agencies were unable to provide evidence of this clearance when requested.

Source: ANAO analysis.

**3.10** While limited, these results indicate that there is room for strengthening agencies' procedures in this area and, in some cases, improving records management.

**3.11** As raised in Chapter 2, the ANAO's review of 200 agreements showed that the legally binding or non-legally binding nature of agreements was not always clearly conveyed. Wide variation in the degree of legal terminology included in cross-agency agreements was also apparent. A small number of minor agreements read more like contracts, making extraneous legal assertions.

**3.12** To encourage consistency and accurate interpretation of the content of agreements, each agency's procedures should give clear indication of the circumstances in which legal advice and clearance must be sought. It is also advisable that records of legal advice and clearance be kept to inform future agreements and practices more generally in the agency.

## Finance and ANAO guidance

**3.13** Finance has published a range of relevant guidance material that has broad applicability to cross-agency agreements. Particularly pertinent documents include:

- Commonwealth Procurement Guidelines;
- Commonwealth Grant Guidelines;
- Better Practice Guide, *Developing and Managing Contracts: Getting the Right Outcome, Paying the Right Price* (a guide written with the ANAO); and
- Guidelines for Issuing and Managing Indemnities, Guarantees, Warranties and Letters of Comfort.

**3.14** The ANAO's 2003 *Better Practice Guide on Cross-Agency Governance—Guidance Paper No. 7* also identifies important features to include in formal agreements. Agreements are assessed against these in Chapter 4. Agency responses to the ANAO questionnaire and subsequent consultation suggested a reasonable level of familiarity with these sources of information.

## Agency-developed guidance material

**3.15** The ANAO asked ten of the 21 audited agencies to provide their intranet guidance material for cross-agency agreements. Four of the agencies were able to present documentation that would offer staff substantive guidance although, for one of these agencies, the material was only accessible by a small area. For the remaining six agencies, where intranet material was provided, the guidance therein was limited and tended to be subsumed under more generic procurement and contracting instructions. Five of the ten agencies were able to use agreement templates provided by their respective agency.

**3.16** The following extract from the Australian Taxation Office's corporate policy on Memoranda of Understanding provides a useful indicator of when collaborative efforts should be documented in a formal agreement, rather than a simple exchange of correspondence.

### Table 3.4

#### Example: When to formalise a cross-agency arrangement

In deciding whether or not to formalise a joint arrangement in a document such as a memorandum of understanding, agencies should consider whether the proposed arrangement:

- involves commitment of significant resources;
- is intended to govern activities between the parties over a significant period of time (that is, 12 months or more);
- involves the transfer of sensitive information between parties, such as confidential or personal information;
- is for the exchange or secondment of employees between the parties on a continuing basis; or
- involves either party requiring a formal commitment from the other party as to their obligations.

An exchange of correspondence may suffice in less complex situations, for example where two agencies:

- wish to clarify existing or evolving responsibilities; or
- agree to certain administrative responsibilities under a Government initiative or legislation which do not entail an exchange of services or information.

Source: Extract from the Australian Taxation Office (ATO), MOU Corporate Policy 2009.

**3.17** While there are benefits in agencies having an internal policy and processes for cross-agency agreements, a more overarching whole of government policy or guide for the development and management of cross-agency agreements would also be beneficial, as this would assist agencies in implementing consistent policies and processes, and realise some degree of unison and efficiency by reducing duplication of effort across the agencies.

## Better Practice

### Developing agency guidelines

Agencies can promote the development of better practice agreements by providing their staff with guidance material that is appropriately designed to meet the needs of their agency and promote good public sector governance. Better practice principles that apply to individual agencies are:

- Develop agency policies and guidance material to provide clear direction of the processes for developing, endorsing, and managing cross-agency agreements. Consult with other agencies that may be more progressed in this area and draw on existing guidelines and better practice to determine the extent and content of guidance required.
- Agency guidelines should present details of clearance processes and delegations, situations to seek legal advice, and link to templates or examples of agreements which contain essential provisions for non-legally binding Memoranda of Understanding. Provision of templates and instructions to staff in a readily accessible form will encourage consistency and completeness of agreements.

## 4. Key provisions

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*This chapter examines the extent to which agency agreements include provisions that promote sound administrative practice.*

### The need for key provisions in cross-agency agreements

**4.1** There is no documented general or legal framework for cross-agency governance arrangements in the Commonwealth.<sup>39</sup> To accord with the Government's accountability and performance reporting requirements, it is therefore important that cross-agency agreements contain clear and appropriate provisions to inform and encourage effective, efficient and ethical management practices.

**4.2** The nature and extent of provisions will be determined largely by the objective or aim of the agreement, the responsibilities of each party, the specific activities to be undertaken, and degree of risk involved. When developing agreements it is important to note that 'Cross-agency policy development or operational arrangements should not inadvertently result in an accountability gap where responsibilities for outcomes are unclear or ambiguous.' Important elements to include in formal agreements include:<sup>40</sup>

- objectives of the arrangements, including desired outcomes and timeframes;
- roles and responsibilities;
- details of the activity, including specification for services or projects;
- resources and budgetary issues;
- shared risk management;
- agreed dispute resolution mechanisms; and
- modes of review and evaluation.

Source: ANAO, *Better Practice Guide—Public Sector Governance*, Guidance Paper No. 7, 2003.

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<sup>39</sup> ANAO *Better Practice Guide—Public Sector Governance*, Guidance Paper No. 7: *Cross-Agency Governance*, July 2003, pp. 2 and 3.

<sup>40</sup> The National Collaboration Framework (NCF) templates (see Chapter 3) also provides guidance on suitable provisions to include in cross-agency agreements. The NCF templates include a broader range of provisions which agencies may access, with the intention they be tailored for use by agencies in different Australian jurisdictions.

**4.3** Including provisions to address each of these key elements helps to bring about a sounder understanding by all parties of the purpose, responsibilities and core requirement of the agreement.

## Analysis of key provisions

**4.4** The ANAO assessed 200 cross-agency agreements for their general clarity and relevance of provisions, using the criteria listed in Table 4.1.<sup>41</sup>

**Table 4.1**

### ANAO analysis: Inclusion of key provisions in agreements

Key provision and its relevance	Overall Quality	ANAO findings and comments
<b>Objective</b> A clear objective will assist in focussing each agency on the overall intention and expected outcome of the cross-agency initiative.	G	Almost always present (94 per cent) in the agreements assessed. However, linking of objectives to agency outcomes was rare. Contextual information was often missing, and would have been useful in many cases.
<b>Context of the agreement</b> Help to ensure that all parties are aware of respective responsibilities, and the context and legal requirements of the services required. The Legislative basis of the program or activities, funding sources (such as budget initiative 2009-10) should be clearly specified.	IR	The use of contextual information was variable. While some agreements included references to enabling and related legislation, few provided information in total budget commitments or service estimate. There were, however, several examples where the context, legislation and funding source were provided to produce a very clear background to the agreement.
<b>Roles and responsibilities</b> Gives clarity and direction for implementation, monitoring, review, evaluation and dispute resolution.	G	Present in 93 percent of the agreements assessed. Where not present, in most cases, the respective agencies tended to have other (separate) documentation of their respective roles and responsibilities.
<b>Activities</b> Details the main activities to be undertaken by each party to the agreement.	G	Mostly met (89 per cent) across the agreements assessed. In most instances these were appropriately linked to agency roles and responsibilities, but not always linked to performance measures.
<b>Performance measures</b> Usually in the form of performance indicators (PIs) or service standards and targets, these are important for measuring deliverables and alerting managers to potential problems. PIs should, where appropriate, be linked to timeframes and include reciprocal PIs or standards (that is, acknowledge agency dependencies for delivery of goods or services).	S	The quality of specifications and measures varied considerably, with many agreements lacking performance measures where it would have been appropriate to include them. Of a possible 157 agreements where PIs would have been appropriate, 68 (43 per cent) defined them. The inclusion of PIs is an areas requiring improvement, including the demonstration of linkages to broader outcomes and financial performance.

<sup>41</sup> Op. cit ANAO 2003, Better Practice Guide—Guidance Paper No. 7.

<b>Deliverables</b> Clearly defining the deliverables is a critical aspect of any agreement. This may be as a statement of work/requirement, and should explain the goods or services to be provided	S to G	Present in all agreements assessed (where required), but only sometimes linked to both timelines and performance measures/standards.  The greatest clarity was achieved where tables were used to set out the deliverables against timelines and PIs.
<b>Funding arrangements</b> Improves transparency and conveys the significance of the agreement in terms of materiality. Total funds associated with an agreement, including fee for service elements, should be included.	IR	Overall, this criterion was partially (inconsistently) met.  Fee for service agreements tended to state the fees only. A few agreements stated that the agencies were responsible for their own funding/resources. However, for many, it was not clear whether the agreement had any associated funding, limiting their transparency (also see Table 4.2).
<b>Shared risk management</b> Ensures risks don't fall in the gaps of agency responsibility and materialise for lack of management awareness	IR	The sharing of risks was identified by 22 per cent of agreements, and was often not met where required. Few agreements, however, included an assessment of risk or a commitment to managing risk post-signing. Some head agreements included a template for a risk assessment to be completed for proposed schedules but often these were not present or complete in the examples examined.
<b>Review and evaluation</b> Encourages early consideration of review and evaluation needs (e.g. data collection) so that a review can have a sound basis and be conducted on time.	IR	The requirement was met to the expected standard in 27 per cent of cases.  The majority of agreements included some provision for a review to occur, but only a few included any details around the mode of review (way in which the review would occur). For most, this seemed to be something considered well after the agreement was developed.
<b>Dispute resolution mechanisms</b> A tool for managing the risk of disputes affecting the success of the activity. Supports timely resolution of problems to minimise disruption to the activity.	S to IR	The requirement was partially met. While 63 per cent of the agreements assessed contained a dispute mechanism clause, most of these adopted a rudimentary approach to dispute resolution.

Source: ANAO analysis.

Note: The central column indicates the quality and clarity of the clauses where applicable. The values are:

- G (overall good—clear and usefully constructed provision);
- S (satisfactory—usually worded appropriately with clear meaning); and
- IR (improvements required—poorly worded or not appropriate usage of the provision).

**4.5** The above analysis, together with previous ANAO audit findings, signifies a need to strengthen the clarity of cross-agency agreements in several key areas. These are examined in more detail below.



## Specific areas to focus improvement

### Providing sufficient context to objectives and outcomes

**4.6** Almost all the agreements examined included some form of statement of their objectives. For the most part, these were clearly articulated, but at times, were not given enough context to convey a complete picture of the program's significance. In general, the purpose and intent of agreements was communicated more effectively when accompanied by contextual information (even minimal) such as background to the MOU; budget initiatives and funding relevant to the program; and any overarching legislation. This additional detail is particularly important where the agreement covers complex issues or is part of a larger suite of agreements, for example, a single project MOU under a higher level Collaborative Head Agreements for a multi-faceted program initiative.

**4.7** Some of the more complex agreements provided joint outcomes but this practice was not evident in the majority of cases. Few agreements stated how the arrangements or objectives related to meeting agency and/or government outcomes. In part this was a reflection of the minor nature of many of the agreements, and was acceptable. The linkages between the objectives, outcomes, and performance indicators were, at times, tenuous in MOUs covering larger or financially material programs.

**4.8** A more visible link between the objective, performance measures and outcomes would contribute to a more focused approach to reporting, review and evaluation which will, in turn, inform whether cross-agency arrangements are promoting appropriate value and efficiency of service (also see below for performance indicators).

### Including measurable performance indicators

**4.9** Accountability relies on the availability of relevant and timely performance information. In cross-agency arrangements, joint outcomes may exist and agency responsibilities can overlap or be influenced by the other party. In this context, agreements need to clearly define appropriate and agreed performance indicators, and accommodate the revision of performance requirements as the need arises.

**4.10** Agreed performance indicators and the capability to measure performance are often of prime importance in reporting the success of policies and programs, and the impact of these on higher outcomes. However, in

agreeing to performance requirements, both agencies should be confident that ample capability exists for the required data collection and that reporting is aligned to the program or service delivery objectives and outcomes.

**4.11** Of the 200 agreements examined, performance indicators were not applicable in 22 per cent of cases. This was mainly due to: the minor nature of the agreement; or a long-term arrangement with mutual benefits between agencies where there were no substantial costs or resources involved. Thirty-four per cent of agreements specified clear performance indicators. Service delivery type agreements more often included service level standards and timelines; an appropriate and useful approach. However, for around 40 per cent of agreements, while performance indicators would have been appropriate, they were either not included or lacked clarity.

**4.12** The inclusion of reciprocal performance indicators in cross-agency agreements was mentioned earlier in Chapter 2.

### **Clearer statement of budgetary issues**

**4.13** Whether agreements involve payment or transfer of substantial funds between agencies, or significant use of other resources, the respective agencies are expected to consider efficient and ethical use of resources with regard to value for money in meeting the objectives of the agreement.<sup>42</sup>

**4.14** Cross-agency agreements can involve the administration of large amounts of funding or none. The mechanism of funding (and transfer of funds) varied considerably across the different agreements and agencies, for example, transfer of a single amount from one agency to another, joint contribution of funds, and fee for service arrangements. However, commonly, there was minimal detail as to how proposed activities or commitments were resourced (see Table 4.2).

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<sup>42</sup> Under section 44 of the FMA Act there is a requirement for CEOs to manage an agency's resources efficiently, effectively and ethically. Op. cit. ANAO and Finance Better Practice Guide—*Developing and Managing Contracts*, 2007, p. 8.

**Table 4.2****Specification of financial arrangements: ANAO analysis**

Criteria	ANAO finding/comment		
The agreement contains a clause about general financial arrangements under the agreement	Agreements did not always clearly indicate whether there was associated funding. Provisions relating to funding, such as invoicing provisions, were usually included (for those where funding was relevant) but agreements often did not specify an amount. Better clarity was achieved in instances where agency agreements included the funding amount or stated that agencies were responsible for their own funding.		
The agreement involve funding, and if yes, was the full funding amount included in the agreement	Of the 200 agreements reviewed, 37 per cent specified funding amounts. Where a total amount was given, the majority were for \$20m or less. Often, the funding amount or funding arrangements were not clearly stated.		
The source or mechanisms of funding is clear	Agreements with documented funding amounts did not always identify which agency was responsible for the funds.		
Where agreement involved payment of fees for service, details of fees were provided	Agreements involving a fee for service usually specified the fees, or referred to additional sources of information for the fees structure.		
Question asked: How often are agreements cleared through agency financial area (from ANAO 's questionnaire) ?			
Agency response:	Always 7	Sometimes 13	*Other 1

Source: ANAO analysis of agency agreements.

Note: \*1 agency specified 'unknown' for financial clearance.

**4.15** As requirements differ for various appropriations and funding situations, it is desirable for agreements to set out clear details of any associated funding appropriations, as well as how the funds are to be paid and the intended use. Agencies often include a schedule to the agreement to outline financial arrangements. This is an appropriately transparent practice, providing the schedule is comprehensive and updated regularly.

**4.16** Where there was no appreciable funding through agreements, the cost of participating agencies' staff commitment and overheads were not often documented in agreements. Given the substantial commitment in staff resources often required for larger across-agency initiatives, such costs may be substantial. In terms of providing greater transparency, acknowledging the costs of administering an agreement (including, for example, its associated coordination unit and committees) would be beneficial to agency planning. As many agreements did not fully detail the resource commitment of each

participating agency, there is a potential risk that signatories are not fully informed of the magnitude of the commitment they are undertaking.

## **Dispute resolution mechanisms**

**4.17** An appropriate dispute resolution mechanism can be extremely beneficial in the early resolution of issues arising during the course of the agreement. Most of the 200 agreements that the ANAO examined included a dispute resolution provision. While there were some very good examples (see Table 4.3), around 40 per cent of the agreements contained insufficient detail on the mechanisms and timeframes for resolving disputes.<sup>43</sup> The more effective provisions for dispute resolution included the following elements:

- agreed timeframes for resolution and escalation of issues;<sup>44</sup>
- specific contact points with clearly designated roles for the resolution process;
- a tiered approach to the negotiation and resolution process that corresponds to the day-to-day management of the agreement and overarching relationship management;
- a final authority figure; and
- a clear plan for ensuring continuation of the work/activity while a dispute was under resolution.

**4.18** Table 4.3 identifies examples of dispute resolution clauses from the agreements reviewed in the audit.

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<sup>43</sup> Of the 200 agreements reviewed, 5.5 per cent did not require dispute resolution clause and 54 per cent contained a reasonable dispute resolution clause.

<sup>44</sup> Setting of an appropriate timeframe will depend on the nature of the specific issue and reflect the significance and priority of activities under the agreement. High priority issues that may take time to resolve, should be quickly brought to the attention of senior officers.

Table 4.3

**Examples: Dispute resolution provisions**

Examples of dispute resolution clauses	ANAO comment
<b>Example 1: minimal approach</b>	
Where any dispute arises between Parties under this agreement, the Parties will take all necessary steps to resolve the dispute by negotiation in good faith. Wherever possible disputes should be resolved at the lowest level through direct negotiations bearing in mind whole of government principles.	Expresses suitable principles of negotiation in good faith and resolution at lowest possible level, however, the process would be strengthened by clear articulation of the level at which responsibility for resolution lies, and inclusions of agreed timeframes.
<b>Example 2: relatively uninformative</b>	
The Parties agree that any dispute arising during the course of this MOU will be dealt with by the Parties trying to resolve the dispute by direct negotiation, including by referring the matter to persons who may have authority to intervene and direct some form of resolution.	This is quite vague, giving little information about the process to be undertaken, or the identity of responsible officers in resolving disputes.
<b>Example 3: a more unequivocal approach, though lengthy</b>	
<p>The parties agree to work co-operatively at all levels to advance the Government's [relevant policies] and service delivery objectives. If any dispute or disagreement arises, [Agency A] and [Agency B] officers will make every effort to resolve the matter amicably and expeditiously.</p> <p>Disagreements relating to policy and legislative interpretation will be handled in accordance with the procedures described in the Policy and Legislative Interpretation Protocol at Schedule 5.</p> <p>Disagreements relating to an individual Protocol ...will, in the first instance, be addressed by the Protocol Manager or Program Managers, as appropriate. If they are unable to resolve the matter, the Protocol Manager or Program Manager may notify a disagreement to their MOU Manager.</p> <p>The MOU Manager will, in consultation with the other MOU Manager, arrange for the matter to be considered by the Management Committee which must consider the matter within 30 days of the first MOU Manager's advice to the second MOU Manager. If the Management Committee is unable to resolve the matter, it will be referred to the Secretary and the CEO for resolution...</p>	<p>Good features of the example are:</p> <ul style="list-style-type: none"> <li>the first sub-clause keeps the objective of the agreement foremost;</li> <li>the process includes a tiered approach, which makes best use of staff resources and delegations;</li> <li>there is a dispute resolution protocol;</li> <li>an escalation process is included; and</li> <li>it specifies a timeframe (30 days) for resolution.</li> </ul>

Source: ANAO analysis and examples from various agency agreements.

**4.19** A few agreements included statements to the effect that agencies may go through the courts as a final stage to resolve disputes. However, such statements are generally inappropriate in the Commonwealth, even where legally possible. When things do not go to plan, the public is unlikely to be satisfied with blame shifting or news of court action—the relevant Minister(s) and agencies are likely to be expected to make good.

## Better Practice

### Incorporating suitable key provisions

Successful cross-agency agreements clarify the scope and roles and responsibilities of each party, primarily by including key provisions: objectives of the arrangements, including desired outcomes and timeframes; roles and responsibilities; details of the activity, including specification for services or projects; resources and budgetary issues; shared risk management; and agreed dispute resolution mechanisms.<sup>45</sup> However, developing a clear and workable agreement goes beyond simply inserting the above provisions. Better practice involves the clear articulation of sufficient relevant information so that all parties to the agreement understand their objectives, obligations and performance expectations. Useful cross-agency agreements:

- Have clear objectives supported by sufficient context and links to applicable agency and government outcomes, to convey the full scope and significance of the cross-agency arrangements.
- Define achievable performance measures. Ideally these should be aligned to outcomes and deliverables, and specify timeframes and frequency of reporting. It is essential that agencies have the capability to collect and report the necessary data to meet performance requirements under the agreement.
- Have transparent processes and promote sound administrative practices by providing sufficient details of agreed procedures for services and deliverables, financial arrangements, performance requirements and other key administrative matters.
- Include a risk management strategy or plan and assess risks early and throughout the life of the agreement. Identify shared risks and allocate responsibility for the management of these.
- Incorporate a dispute resolution process which has agreed timeframes and a pathway for escalating and resolving issues. The dispute resolution process requires contact points with clearly designated roles in resolution, identification of the final arbiter, and suitable arrangements to ensure that normal work and obligations continue.

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<sup>45</sup> Op.cit. ANAO, 2003, Better Practice Guide, Guidance Paper No. 7.

## 5. Effective agency coordination

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*This chapter examines whether agencies are effectively coordinating and monitoring cross-agency agreements, and making adequate provision for termination and review.*

### The purpose of monitoring agreements

**5.1** Although cross-agency agreements are used extensively by Australian Government agencies, there is little consolidated information on the full extent of this use, the overall processes used and costs involved, or the ensuing benefits of such collaborative arrangements. Monitoring of the overall quality, currency and appropriateness of cross-agency agreements, at either an agency or broader government level, is not widely practised or consistent, so potential benefits from lessons learned are largely unharnessed.<sup>46</sup>

**5.2** Monitoring of agency-wide practices, particularly the performance or compliance in a particular administrative function can provide useful information for improving agency policies and developing better controls and quality assurance procedures. Such improvements contribute to the efficiency and effectiveness of program implementation and service delivery, particularly where a whole-of-government approach is necessary.

**5.3** Through this chapter, the ANAO examines the management of cross-agency arrangements from three perspectives:

- agency coordination: whether agencies have effective processes in place to monitor the quality and currency of cross-agency agreements;
- review: whether individual agreements included appropriate provisions for review; and
- termination: the appropriateness of termination and succession arrangements.

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<sup>46</sup> This would include internal agency action such as monitoring of the agreement's currency, compliance with government accountability and performance requirements, or even the accessibility of the agreement itself.

## Agency coordination of agreements

### Audit findings on overall agency coordination

**5.4** The ANAO asked 21 agencies to provide a list of current cross-agency agreements. In response, the agencies listed a total of 1819 cross-agency agreements that were currently in use. This sample response provides some insight into the likely scale and reliance on cross-agency agreements across the wider public service (see Table 5.1).

**Table 5.1**

#### Number of cross-agency agreements

The 1819 agreements listed by agencies is not a definitive figure, as:

- Most agencies did not keep a central register of their agreements. They therefore had to compile a list of agreements by requesting input from across their agency. Some agencies could not confidently confirm that they had identified all agreements.
- Agreements can be listed by more than one agency. However, listing of the agreement under different names by partner agencies made exclusion on the basis of name comparison unreliable.\*
- There was some uncertainty within agencies about what constituted a current cross-agency agreement. This likely resulted in some inappropriate inclusions and also some omissions.

Source: ANAO audit results.

Note: \* It cannot be assumed that the true number is significantly lower, as the ANAO observed that a high number of listed agreements were with agencies outside the 21 audited agencies. It was beyond the resources of the audit to verify all listed agreements, due to inconsistency in the agreements' listed name across agencies.

**5.5** In many instances there is a lack of visibility around cross-agency agreements. In part, this may be indicative of the decentralised and devolved approach taken by many agencies in developing agreements and managing cross-agency relationships. However, for some agencies it is also the result of limited corporate oversight, monitoring, supporting information or process.

**5.6** Some agencies have overarching policies or guidance material which assists managers and encourages consistency and appropriateness of agreements, while others do not. A small number of agencies have also centralised key elements of agreement monitoring by establishing registers and coordination units, but often these are not in place. The ANAO examined these elements of administration (see Table 5.2).



**Table 5.2****Agency coordination**

The ANAO reviewed processes for the coordination of cross-agency agreements in 21 agencies. The results indicated that:

- Six of the 21 agencies advised that they had central registers in place for cross-agency agreements. Two of the six were not up to date.
- Of ten agencies examined more closely by the ANAO, six were able to confirm the processes undertaken for developing and clearing cross-agency agreements, for a small group of selected agreements.
- There was not a consistent approach to coordinating or monitoring of cross-agency agreements across the 21 agencies. In some instances there is variation between different divisions of the same agency. This can, for example, be due to functional differences such as one division always seeking financial clearance of their agreements, while for other areas this may be deemed unnecessary.

Source: ANAO analysis and agency responses to the ANAO audit questionnaire.

**The benefits of an agreement register**

**5.7** During the audit, some agencies raised concerns about the time and effort required to establish and maintain a register. However, larger agencies with registers are generally better placed to compile accurate information on current cross-agency agreements within their agency, and in a timely manner. Recognising that the needs of an individual agency will differ with its size, the number of agreements, and complexity of work, each agency needs to make a balanced assessment, also considering the additional transparency and monitoring capability that registers can provide.

**5.8** The benefits of using centralised coordination and agreement registers include:

- confirming how many agreements are in place and when they are due for renewal or review;
- recording execution dates of agreements, or to alert when this is overdue;
- providing contact officers and contract managers for timely referral of queries;
- alerting financial areas when large payments are due and to more generally monitor payments;
- informing internal audit and/or financial areas to instances of underperformance or where budget initiatives are delayed;

- preventing duplication of work, by checking the list of existing agreements;
- recording major variations to significant agreements; and
- checking compliance with agency quality standards and clearance processes.

**5.9** Though limited, the ANAO's examination of agency registers and associated procedures indicated that a well-maintained agency register can be beneficial, particularly for tracking the currency, compliance and quality of agreements. Coupled with consistent agency procedures for clearance and endorsement, entering an agreement on a register so that its status can be monitored and reviews planned for, gives agencies an additional level of assurance. A well managed register can be a particular asset in agencies which have a large volume of agreements or where regular review or variation of agreements is required.

**5.10** The ANAO suggests that agencies examine their coordination of cross-agency agreements and make improvements, as appropriate.

## Review of agreements

**5.11** The regular review of agreements is a key component in assessing whether a cross-agency arrangement has been successful and is using lessons learned to inform future efforts. Review can be viewed as a continuous process throughout the life of the agreement or as a final review to determine the overall success of the program. Both of these activities are supported by the collection and analysis of data, and reporting of progress against the agreement's performance indicators.

**5.12** Early setting of the terms of the review, and its timing, can help to ensure that appropriate data is identified and collected to inform the review.

The MAC report *Reducing Red Tape in the Australian Public Service* stresses the need for periodic review of requirements to ensure they remain fit-for-purpose. The MAC recommended timeframe for review of internal requirements is at least every three to five years. A strategy for future review at appropriate intervals should be built in at the development stage.

Source: Management Advisory Committee (MAC), *Reducing Red Tape in the Australian Public Service*, 2007, p. 12. Also see Chapter 2 of the audit report.

**5.13** The timing and nature of reviews requires consideration in the context of the risks associated with a program or activity. It will also be influenced by the timeframe of the agreement, the expected timeframe of the cross-agency arrangement, and performance to date.

**5.14** Of the 200 agreements examined by the ANAO, 45 per cent included a provision stating that a review could, or would, occur and 36 per cent had no such specification.<sup>47</sup> In most cases where a review was indicated, a timeframe for the review was given. However, less than 25 per cent provided the mode of review.

**5.15** If planning for reviews does not occur early, there is a greater risk of insufficient data being available later to allow proper assessment of key activities and overall success under the agreement.<sup>48</sup> Review and evaluation provisions are a key tool for managers to ensure the agreement and the agreed activity remain fit-for-purpose. This becomes particularly important in the case of agreements that lack:

- clear performance indicators or service standards;
- a link between the objective and government outcomes; and
- a specified end-date.

**5.16** Table 5.3 shows an example of a review provision which incorporates many good features. Each agency needs to consider the detail required for their given situation.

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<sup>47</sup> The ANAO estimates that such a provision would have been appropriate for 175 of the 200 agreements.

<sup>48</sup> Reed, B. 2004 *Accountability in a shared services world*; discussion paper no.10, Future Challenges for E-government – Collective Accountability; p. 142.

**Table 5.3****Process for the review of a cross-agency agreement—a suitable example**

Extract from Business Partnership Agreement between the Department of Health and Ageing (DoHA) and Centrelink 2009-12 Review of the Agreement:	Desirable features
<p>The Parties will establish a coordination and consultation committee (known as the Consultation Committee) which will meet quarterly. The Consultation Committee comprises a representative from each of the Schedules respective teams and a member from the Centrelink Client Business Branch and the Departments Residential Program Management Branch.</p> <p>The quorum for a meeting of the Consultation Committee is greater than half of the members in attendance (minimum of three members) and must include one member from the Department and one member from Centrelink.</p>	<p>Clearly states the mechanisms and responsible party/body for continuous review of the BPA:</p> <ul style="list-style-type: none"> <li>• establishment of committee;</li> <li>• defines membership and quorum; and</li> <li>• regularity of meetings.</li> </ul>
<p>The Consultation Committee will be jointly chaired by each organisation and organised on a rotational basis as will secretariat support. The Consultation Committee may adopt such operational guidelines as it chooses in order to carry out its functions as long as they are consistent with the Agreement. The Consultation Committee will meet to discuss policy and service delivery issues as they relate to delivery of the Services under this Agreement and the Schedules.</p>	<p>Defines governance and operational elements of the committee:</p> <ul style="list-style-type: none"> <li>• joint chair;</li> <li>• adopt guidelines as needed; and</li> <li>• extent of committee's role.</li> </ul>
<p>Centrelink and the Department will perform an annual review of the provision of Services and related issues in this Agreement and its Schedules. The annual review of the Agreement is to be undertaken by the Consultation Committee and completed by 31 July of each year during the life of this Agreement. Results of these reviews are to be presented to the National Manager, Client Business Branch and the Assistant Secretary, Residential Program Management Branch.</p>	<p>Requirement for review is clear for:</p> <ul style="list-style-type: none"> <li>• timing of the review;</li> <li>• what is to be reviewed;</li> <li>• who is to undertake the review; and</li> <li>• who should receive the report of the review.</li> </ul>

Source: ANAO analysis. Extract from the Department of Health and Ageing—Centrelink Business Partnership Agreement 2009–12.

Note: This example is from a substantial cross-agency agreement. Not all agreements, particularly less significant ones, would require this degree of detail.

## Termination and succession

**5.17** Circumstances can arise where a cross-agency activity can appropriately cease before the nominated end-date for the agreement. To accommodate this, most agreements incorporate a termination clause enabling the agencies to terminate the agreement on written notice to the other party. This was sometimes included as the final stage of the dispute resolution process.

**5.18** When terminating a cross-agency agreement, important considerations are whether:

- agencies have agreed to cease the agreement;
- the task or service is still required;

- ceasing the agreement or activity will have significant impact on clients, and if so, how this can be minimised; and
- alternative arrangements have, or can, be made.

**5.19** While termination clauses were quite varied in their design, those that best reflected a more conciliatory approach to termination with measures to facilitate succession arrangements, provided the least risk to the continuity of agency business. Table 5.4 provides examples.

**Table 5.4**

**Termination provisions: examples from agency agreements**

Termination provision	ANAO comment on the provision
Either Party may terminate this MOU by written notice to the other Party. The MOU will terminate 30 days after the date upon which the other Party receives written notice of the intention to terminate.	As the notice period is short, this clause is more suited to minor agreements. For complex or high cost arrangements, notice of 6 to 12 months can be necessary.  Provision for alternative delivery of any core functions of the agreement will also help business continuity.
This MOU will operate from the date it is signed and agreed until 30 June 2005 and will remain in effect until replaced or rescinded.	Similar clauses were used in many agreements, and were not always effective as: <ul style="list-style-type: none"> <li>• the agreements were not dated; or</li> <li>• the end-date had already passed and no extension to the agreements was authorised.</li> </ul>
This MOU may be terminated by either Party giving not less than twelve (12) months notice in writing to the other Party. The parties will cooperate fully in putting appropriate transition arrangements in place to ensure minimal disruption to business operations following any decision to terminate this MOU.  Separate termination arrangements may apply where...or in the event of Machinery of Government changes.	Providing sufficient notice of termination and suitable succession arrangements will facilitate a smoother transition that minimises disruption of services or additional costs.

Source: ANAO, derived from various agency agreements.

**5.20** Termination provisions for significant cross-agency agreements can be strengthened by defining:

- a requirement for written notification;
- a clear process for termination, including mechanisms and opportunity to resolve any differences collaboratively and timeframes; and
- succession arrangements, plan or strategy.

**5.21** The ANAO suggests that agencies give greater consideration to potential risks and incorporate succession arrangements (or an exit strategy)

into cross-agency agreements, to help prevent any adverse affects on an agency's core business in the event of the agreement's termination. A suitable exit strategy would include provision for such factors as further funding of the activity, handover documents, and contribution to a final report or evaluation. A sound approach is to deal with these matters early in the negotiation of the agreement, as part of risk identification and management.

## Better Practice

### Establishing effective monitoring and review processes

Monitoring of agency-wide practices, including performance or compliance in a particular administrative function, can provide useful information for improving agency policies and developing better controls and quality assurance procedures.

Better practice for agencies' management of cross-agency agreements includes:

- Implement procedures to monitor the currency and quality of cross-agency agreements.
- To aid monitoring, maintain a register for recording each agreement's location, contact officers, currency, expected review or termination dates. This will help to ensure that agreements are kept up to date, properly endorsed and readily accessible.

Give early attention to aspects of cross-agency agreements that will not be needed immediately, such as review and termination provisions, so that they are not overlooked or compromised later.

- Plan early for a review to occur. Incorporate specification for a review into the agreement: a minimum timeframe of three to five years and more frequently where there are no performance measures or regular reports; and define the nature and mechanism of the review (for example, a review committee). Identify what information (data) is necessary for the review.
- Prepare for termination of the agreement. Develop and agree an exit strategy or succession plan to allow exiting the arrangement without compromising either agency's business or the success of the program or services. This should incorporate options for planned succession or unexpected termination.



Ian McPhee  
Auditor-General

Canberra ACT  
26 May 2010

# Appendices





## Appendix 1: Australian Government agencies participating in the Audit

The audit involved the following 21 Australian Government agencies.<sup>49</sup>

### ***Nineteen portfolio departments***

- Attorney-General's Department
- Department of Agriculture, Fisheries and Forestry
- Department of Broadband, Communications and the Digital Economy
- Department of Climate Change and Energy Efficiency
- Department of Defence
- Department of Education, Employment and Workplace Relations
- Department of the Environment, Water, Heritage and the Arts
- Department of Families, Housing, Community Services and Indigenous Affairs
- Department of Finance and Deregulation
- Department of Foreign Affairs and Trade
- Department of Health and Ageing
- Department of Human Services
- Department of Immigration and Citizenship
- Department of Infrastructure, Transport, Regional Development and Local Government
- Department of Innovation, Industry, Science and Research
- Department of the Prime Minister and Cabinet
- Department of Resources, Energy and Tourism
- Department of the Treasury
- Department of Veterans' Affairs

### ***Two other agencies***



- Australian Taxation Office
- Centrelink

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<sup>49</sup> <[www.finance.gov.au/financial-framework/fma-legislation/fma-agencies.html](http://www.finance.gov.au/financial-framework/fma-legislation/fma-agencies.html)> [accessed April 2010].

## Appendix 2: ANAO methodology for the analysis of agency agreements

### ANAO process for assessing cross-agency agreements

ANAO process	Method	Scope of analysis
Identification	21 agencies: <ul style="list-style-type: none"> <li>complete a questionnaire regarding current practices for developing cross-agency agreements; and</li> <li>provide the ANAO with a list of current cross-agency agreements.</li> </ul>	Approximately 1800 agreements identified across the 21 agencies.
		
Review	21 agencies provide agreements to ANAO for: <ul style="list-style-type: none"> <li>assessment against audit criteria (including currency, sign-off, and appropriateness of provisions); and</li> <li>to identify better practice.</li> </ul>	200 agreements selected and reviewed.
		
Verification	Verification of agencies' processes and consistency with individual agreement requirements: <ul style="list-style-type: none"> <li>in ten agencies, further examination and consultation for selected agreements and agency practices for developing and managing cross-agency agreement more generally; and</li> <li>assessment of agencies intranet guidance material.</li> </ul>	17 agreements examined further through agency meetings, and document and file review.  Guidance material examined for eight agencies.

Source: ANAO

## Appendix 3: Examples of cross-agency agreements

The following examples demonstrate the wide range of cross-agency agreements examined in the course of the audit.

### Example A 3.1

#### Agency Head agreement

The Australian Taxation Office (ATO) and the Australian Bureau of Statistics (ABS) collaborate on a range of activities, including the provision of taxpayer data to ABS for statistical purposes, the outputs of which are used to inform public policy and business directions. The ATO and ABS have established a Head Memorandum of Understanding (Head MOU) to facilitate entering into and monitoring subsidiary agreements between the two agencies. The MOU has six subsidiary agreements for exchange of information or other activities.

The Head MOU sets out provisions for: how to propose subsidiary agreements; arrangements for an Agency Head Committee; and establishing sub-committees. It includes a schedule of common provisions which covers essential components of: administration, including management of disputes and variations; operational provisions, such as confidentiality and intellectual property; data transfer; and payment provisions.

Source: Australian Taxation Office, Memorandum of Understanding—Head Agreement, May 2009.

### Example A 3.2

#### Secondment of employees

The Department of the Prime Minister and Cabinet (DPMC) uses a short (8-page document including the schedule) Memorandum of Understanding (MOU) for the secondment of employees to the DPMC from other 'home' departments. The MOU sets out the general purpose and terms of the work placement, and defines the responsibilities of the DPMC (as the host agency), the home organisation, and the individual participant. A signed schedule to the MOU constitutes an agreement between the participant and the host manager on the mutual objectives and obligations of the placement, and provides a basis for assessment of the participant's performance against defined learning objectives.

Source: The Department of Prime Minister and Cabinet, 2009.

### Example A 3.3

#### Provision of ICT services to another agency

The Department of Foreign Affairs and Trade (DFAT) provides information and communication technology (ICT) services to the Export, Finance and Insurance Corporation (EFIC) under a Memorandum of Understanding (MOU). The purpose of the MOU is to 'facilitate the efficient and cost-effective delivery of ICT services by DFAT in support of the Australia's national interests globally. It reflects the increasingly central role of ICT in supporting and sustaining those interests and the need for the conduct of Australian Government business overseas to be pursued by agencies in a coherent, consistent and coordinated whole-of-government manner.'

The MOU is quite comprehensive, with an 18-page core MOU supplemented with a 78-page service catalogue and a 22-page product catalogue. In total, the MOU covers the roles and responsibilities of the two parties, the services provided (which include voice, bandwidth, data and related ICT hardware, software and infrastructure, training and other forms of support), service levels and conditions, financial arrangements and security. It also has administrative clauses covering review, dispute resolution, termination and the term of the MOU.

Source: Memorandum of Understanding between the Department of Foreign Affairs and Trade and the Export Finance and Insurance Corporation, 2009.

### Example A 3.4

#### Strengthening border security

The Inter-Agency Border Strengthening (IABS) project is a tri-agency Australian Government initiative led by the Australian Customs Service, with the Department of Immigration and Citizenship and the Department of Infrastructure. IABS aims to foster inter-agency communication and cooperation between agencies with a customs, immigration, transport security or border management function in Southeast Asian countries. IABS works in partnership with counterpart agencies in Southeast Asian countries to conduct desktop exercises' with focus on border control incidents in a civil maritime environment. The MOU supports these inter-agency arrangements. The Parties are all represented on the Steering Group of the IABS, which defines the scope of a particular exercise including developing the scenario that will be conducted.

Source: Department of Infrastructure, Transport, Regional Development and Local Government.

### Example A 3.5

#### Joint policy implementation

An MOU between the Department of Resources, Energy and Tourism (RET), the Department of the Environment, Water, Heritage and the Arts (DEWHA) and Department of Climate Change (DCC) (the Parties) formalises arrangements for the joint implementation of the Asia-Pacific Partnership on Clean Development and Climate (APP). The APP is a key component of Australia's climate change policy, and brings together Australia, Canada, China, India, Japan, the Republic of Korea and the United States to promote collaborative approaches to climate change, energy security and air pollution. In the 2006-07 Budget, the Australian Government announced a \$100 million investment over five years in clean development and climate projects and capacity building activities, and to support Australia's ongoing role in the APP.

The MOU is a commitment by the three agencies to work in a cooperative, flexible and open manner in delivering the Government's agenda for the APP Programme, to deliver more strategic outcomes. The MOU outlines the responsibilities of each party and the services they are each to provide. The MOU complements existing planning and procedural documents, including: APP Programme Guidelines; Monitoring, Evaluation and Reporting Strategy; Implementation Plan; the Australian Government-Communication and Stakeholder Engagement Strategy; and Model APP Project Agreements. Joint governance mechanisms to assist in joint decision making and reporting for APP measures include regular coordination and consultation at Senior Executive and operational levels.

Source: Memorandum of Understanding between the Department of Resources, Energy and Tourism, the Department of the Environment, Water, Heritage and the Arts and the Department of Climate Change, 2008.

The above examples, while current at the time of the audit, may have since changed, or be under review, for example, due to Machinery of Government changes or further refinement of interagency arrangements.

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