

# Regulating for Globalization

Trade, Labor and EU Law Perspectives

## The ABF announces a new initiative building on an old concept

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The start of a new financial year is often used by the business community to launch new initiatives into the market. However, in this case, by media release on 1 July 2019, the Australian Border Force (**ABF**) as a division within the Department of Home Affairs (**DHA**) provided details of the establishment of a new ‘Customs Group’ within the ABF.

Of course, the term ‘Customs’ has been with us as a Commonwealth agency since Federation and our Customs legislation was one of the initial pieces of federal legislation adopted at Federation as *Act number 5 of 1901*. Even before Federation, each of the Colonies had its own customs legislation and administration drawn from the English model. That made for some interesting issues, including for the movement of goods between the Colonies which explains many of the Customs buildings at river crossings as well as at ports.

Many of us have a long historical attachment to the term ‘Customs’ and the associated regime

which was in place for many years. That attachment has been strained in recent times, starting with the amalgamation with the Department of Immigration in the Customs and Border Protection Service and then the further change with the creation of the DHA and the establishment of the ABF as an agency under the DHA portfolio. Even at that stage, government had some sensitivity to the ‘customs’ concept referring to the ABF as being Australia’s ‘customs service’ and the creation of the office of ‘Comptroller – General of Customs’ (also the Commissioner of the DHA) at the most leader of the ABF.

However, it is fair to say that there was not comprehensive enthusiasm for the movement away from the stand-alone ‘customs’ organisation with confusion on the operations and boundaries of the DHA and ABF. That confusion continued with a number of subsequent restructures of the DHA and ABF and their respective obligations along with movements of officers between the two organisations. The changes also led to a number of public venues in which the two organisations needed to work together including at the International Trade Remedies Forum (**ITRF**), the National Committee on Trade Facilitation (**NCTF**) and the various advisory groups and sub-committees of both groups.

While there has always been ongoing reform of the role of the ABF, the media release of 1 July 2019 entitled ‘Strengthening Australia’s Customs service’) (see [here](#)) certainly attracted industry attention as there had been none of the usual expectation of the announcement. The media release refers to the creation of a ‘Customs Group’ in the ABF within the DHA portfolio.

The media release was short on detail but did refer to a number of developments including

- That the Group was to be headed by Deputy Comptroller-General of Customs, Dr Bradley Armstrong PSM who is also the Deputy of the NCTF
- The Group will encompass traveller, trade and customs related policy, and customs related compliance, with a strong focus on industry engagement.
- The establishment of a Modern Slavery and Human Trafficking Branch in the new Group to address anti-slavery, including migrant worker exploitation, through global supply chains
- That the Group will be staffed by a blended team – with ABF officers and Home Affairs employees. The release claims that integration will provide ‘an immediate and significant opportunity to better align trade and customs activities’.

The creation of the *Modern Slavery and Human Trafficking Branch* is a significant new move reflecting the increasing importance of modern slavery issues here and overseas including Commonwealth and State legislation in Australia drawing from similar legislation in other jurisdictions and actions to seize the products made from modern slavery and forced labour along with the proceeds of businesses relying on such labour.

Further to these developments, one of the most interesting comments for industry from the media release by the ABF Commissioner was that:

‘This Group will deliver a trade and customs engagement strategy that I will announce later this year, focussing on enhancing ABF’s collaboration with industry in modernising how goods and people move across Australia’s border in the future’.

Ever since the establishment of the DHA and ABF there have been ongoing questions regarding

the co-existence of the trade and customs activities recognising that facilitating and regulating trade may often lead to different outcomes and consequences. This is why so much effort by government and industry has been focussed on facilitating legitimate trade in an efficient way which does not detract from necessary protection against threats to security, revenue, safety and the national interests. The inclusion of the reference to ‘people’ is of additional interest as traditionally, movement of goods and people have been handled separately. Industry which deals with goods and their movement will be watching to see just how much these two goals are handled at the same time by the same people or whether the effective separation will remain.

The reference to a ‘new’ engagement strategy will be keenly awaited by industry given that the strategy launched in 2015 (found [here](#)) is due to expire in 2020. At the moment there are a number of engagement and advisory bodies between industry and all of the agencies at the border (including the DHA, ABF, the Department of Agriculture, the Anti-Dumping Commission and other agencies). This contributes to concerns on duplication of effort and work falling between the various engagement bodies and also creates significant additional work for those from industry involved with that work. One hope is that the nature of the collaboration and whether it will extend beyond the work of the DHA and ABF. However the better guess is that the work will be confined to the operations of the DHA and ABF which leaves open the issue of rationalisation or fundamental restructure of the existing regime including the NCTF and its various advisory groups especially as the current Chair of the NCTF will be leaving that role. That would raise a number of wider concerns both for those currently engaged at that level as well as for Australia’s compliance with the WTO Trade Facilitation Agreement which led to the creation of the NCTF. I certainly believe that there are means to improve the engagement and hope that industry is also directly engaged with the strategy in a meaningful way to best secure results from those interested in the engagement and the agenda.

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