

Defining good faith

Secretariat guidance

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Purpose

This guidance defines the concept of ‘acting in good faith’ for Deed Signatories. The definition reflects the intent of the joint working group that developed the Deed. It takes into account the principles in the Deed and other implementation guidance.

Definition of good faith

Good faith is an abstract and comprehensive term that encompasses a sincere belief or motive without any malice or the desire to defraud others. It refers to a party’s state of mind in acting or carrying out an action or transaction, evincing honesty, fairness, full communication of any hidden issues or information, and an absence of intent to harm other individuals or parties to the transaction. In short, it is the use of honesty and best efforts to deal fairly with others.

Acting in good faith

The Deed is the foundation document for decision-making and cost sharing for joint biosecurity readiness and response activities that are recorded in an Operational Agreement (OA). Industry organisations and MPI enter into the GIA Deed with the intention of meeting their commitments, and with full acceptance that they will be bound by all of the rights and obligations that come with signing the Deed.

The intent of the Deed in applying the concept of ‘good faith’ is to emphasise expectations that Signatories are honest in their interactions with each other and will act in a fair and appropriate manner to honour their Deed commitments. Good faith underpins trust and an effective and enduring partnership.

Good faith is introduced in clause 5.1.13 of the Deed and commits Signatories to sign an OA where they agree that they benefit from the activities and outcomes in that OA. This clause was introduced late in the Deed drafting process to remind Signatories that they are expected to contribute where they benefit. The drafting group did not make signing an OA mandatory, reflecting that by signing the Deed, Signatories make a commitment to all its provisions including to cost sharing where they accrue a benefit.

Acknowledging that primary industries vary in their size and capacity, the Deed gives Signatories the right to determine where and how they will invest to achieve better biosecurity outcomes for the benefit of their sector. There is an expectation that all Signatories are open and honest about their biosecurity priorities, clear about why these are important (materiality) and what they are prepared to invest to prepare for and/or respond to these priorities.

Signatories can limit the financial liabilities of an OA by setting a fiscal cap (clause 5.1.11 of the Deed). There is an expectation that each fiscal cap embodies the concept of good faith – in that it is both fair and reasonable and reflective of industry priorities.

References

1. [The GIA Deed.](#)
2. [Consolidated comments from consultation on the draft GIA Deed released December 2012.](#)

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