

## **ARRANGEMENT**

### **BETWEEN**

#### **THE AUSTRALIAN PARTIES:**

**THE COMMONWEALTH OF AUSTRALIA  
THE STATE OF NEW SOUTH WALES  
THE STATE OF VICTORIA  
THE STATE OF QUEENSLAND  
THE STATE OF WESTERN AUSTRALIA  
THE STATE OF SOUTH AUSTRALIA  
THE STATE OF TASMANIA  
THE AUSTRALIAN CAPITAL TERRITORY  
THE NORTHERN TERRITORY OF AUSTRALIA  
AND**

#### **NEW ZEALAND**

### **RELATING TO TRANS-TASMAN MUTUAL RECOGNITION**

#### **RECITALS**

##### **PURPOSE**

A. The purpose of the Arrangement is to give effect to a scheme implementing mutual recognition principles between the Parties relating to the sale of Goods and the Registration of Occupations, consistent with the protection of public health and safety and the environment.

##### **OBJECTIVES**

B. The objective of the Arrangement is to remove regulatory barriers to the movement of Goods and service providers between Australia and New Zealand, and to thereby facilitate trade between the two countries. This is intended to enhance the international competitiveness of Australian and New Zealand enterprises, increase the level of transparency in trading arrangements, encourage innovation and reduce compliance costs for business.

##### **UNDERSTANDINGS**

C. This Arrangement records the understandings reached by the Parties. These understandings are confined to matters within the Jurisdiction of each Party.

D. In entering into this Arrangement, the Parties recognise the mutually beneficial economic and trade framework which has developed under the 1983 Australia-New Zealand Closer Economic Relations Trade Agreement and believe that trans-Tasman mutual recognition is a logical extension of this relationship. In particular, the Parties believe that a Trans-Tasman Mutual Recognition Arrangement will enhance the international competitiveness of Australian and New Zealand enterprises.

E. It is also intended that this Arrangement will contribute to the development of the Asia Pacific region by providing a possible model of cooperation with other economies, including those in the South Pacific and APEC.

F. The Parties recognise that this Arrangement builds on, and is a natural extension of, the 1992 Mutual Recognition Agreement between the Commonwealth, States and Territories of Australia. It is intended that, as far as possible, the mutual recognition scheme established by this-Arrangement should be consistent with the scheme established by the Mutual Recognition Agreement.

##### **PRINCIPLES**

G. Subject to the provisions of this Arrangement, two basic principles relating to Goods and Occupations respectively, underpin the Arrangement.

1. Goods

The basic principle in respect of Goods is that a Good that may legally be sold in the Jurisdiction of any Australian Party may be sold in New Zealand, and a Good that may legally be sold in New Zealand may be sold in the Jurisdiction of any Australian Party.

2. Occupations

The basic principle in respect of Occupations is that a person Registered to practise an Occupation in the Jurisdiction of any Australian Party is entitled to practise an Equivalent occupation in New Zealand, and a person Registered to practise an Occupation in New Zealand is entitled to practise an Equivalent occupation in the jurisdiction of any Australian Party.

Consistent with the principles in paragraph G, it is the intention of the Parties to minimise exemptions and exclusions to the Arrangement.

The Parties acknowledge that:

1. subject to certain exemptions for the protection of public health and safety and the environment, the Arrangement is intended only to take precedence over such Laws of Participating Parties in respect of Goods as would effectively prevent or restrict the sale in the Jurisdiction of that Party of a Good that can legally be sold in the Jurisdiction of another Participating Party;
2. the scheme does not seek to affect regulation by the Parties of initial requirements for the registration of Occupations, such as requirements relating to qualifications, conduct or the practise of Occupations.

## PART I PARTICIPATING PARTIES

The Participating Parties to the Arrangement are those Parties which have secured the passage or the making of legislation provided for in Part III and caused that legislation to come into force and remain in force. In relation to an Australian Party other than the Commonwealth, a Participating Party will be a Party which has not terminated the reference provided for in a State Act or the request or other enabling provision as provided for in a Territory Act.

## PART II INTERPRETATION

In this Arrangement, unless the contrary intention appears or the context otherwise requires:

(a) “Appeals Tribunal” means, in Australia, the Administrative Appeals Tribunal and, in New Zealand, the Trans-Tasman Occupations Tribunal as provided for in the New Zealand Draft Bill.

“Australian Capital Territory” means the body politic established by the Australian Capital Territory (Self-Government) Act 1988 of the Parliament of the Commonwealth.

“Australian Draft Bill” means the Bill, contained in Attachment A to the Arrangement, and agreed by the Parties as being consistent with the framework for trans-Tasman mutual recognition set out in this Arrangement.

“Australian Jurisdiction” means the legal jurisdiction of an Australian Party.

“Australian Mutual Recognition Agreement” means the Mutual Recognition Agreement signed by the Commonwealth, States and Territories of Australia in May 1992 and enacted under the Commonwealth Mutual Recognition Act 1992 and supporting State and Territory Acts.

“Commonwealth” means the Commonwealth of Australia.

“Conditions”, when used in relation to Occupations, means conditions, limitations or restrictions.

“Cooperation Programmes” refer to Programmes of cooperation between the Australian Parties and New Zealand in certain areas of regulation as set out in paragraph 9.1.

“Date of coming into force” means the date the Arrangement comes into force and will be the date the Arrangement is signed by the Parties.

“Date of Commencement” means the date of commencement of the Arrangement, which will be 1 January 1997. If, however, the Commonwealth and New Zealand Acts do not both come into force until a date later than 1 January 1997, the Arrangement will commence on the date on which the later of these Acts comes into force.

“Deemed Registration” means deemed Registration as defined in paragraph 5.6.

“Designated Person” means: the Governor-General of Australia; a Minister of the Crown of New Zealand; the Governor of a State or a Minister of the Crown for a State; the Chief Minister of the Australian Capital Territory; and the Administrator of the Northern Territory.

“Equivalent Occupations”. Two Occupations are taken to be Equivalent if the activities authorised to be carried out under Registration are substantially the same (whether or not this is achieved by means of the imposition of conditions).

“Exempt Occupations” are Registered Occupations or subsets of activities thereof, or certain classes of persons Registered to practise an occupation that the Parties have determined should be exempted from the operation of the Arrangement.

“Goods” means goods of any kind, and includes:

- (1) animals or plants;
- (2) material of microbial origin;
- (3) a package containing Goods; or
- (4) a label attached to Goods.

“Grant”, when used in relation to Registration, means grant, issue or otherwise confer Registration.

“Heads of Government” means the Prime Ministers of Australia and New Zealand and the Premiers of the Australian States and Chief Ministers of the Australian Capital Territory and the Northern Territory.

“Import” means to import from outside Australia or New Zealand.

“Intellectual property” will have the meaning provided for in Article 2 of the Convention establishing the World Intellectual Property Organisation done at Stockholm on 14 July 1967 and in the World Trade Organisation Agreement on the Trade Related Aspects of Intellectual Property Rights done at Marrakesh on 15 April 1994, and will include all rights, such as those relating to copyright, patents, registered designs, registered and unregistered trade marks, plant varieties, confidential information, circuit layouts and semi-conductor chip products, geographical indications and service marks.

“Labelling” of Goods includes any means by which, at the point of sale, information is attached to Goods or is displayed in relation to Goods without being attached to them.

“Local Registration Authority” for an occupation means the person or Authority in the jurisdiction of the Party having the function conferred by legislation of Registering persons in connection with their carrying on of that occupation under the Laws of a Party.

“New Zealand Draft Bill” means the Bill, contained in Attachment B to the Arrangement, and agreed by the Parties as being consistent with the framework for trans-Tasman mutual recognition set out in this Arrangement.

"Northern Territory" means the body politic established by the *Northern Territory (Self-Government) Act 1978* of the Parliament of the Commonwealth.

"Occupation" means an occupation, trade, profession or calling of any kind that may be carried on only by Registered persons, where Registration is wholly or partly dependent on the attainment or possession of some qualification (for example, training, education, examination experience, character or being fit or proper), and includes a specialisation in any of the above in which Registration may be Granted.

"Produce" includes to manufacture, and also includes to harvest or otherwise produce in the course of any form of primary production.

"Registration" includes the licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation for carrying on an occupation.

"Registered" means having attained Registration

"Regulations" means the broad range of legally enforceable instruments which impose mandatory requirements on businesses or persons.

"Requirements", when used in relation to Goods, means requirements prohibitions, restrictions or Conditions.

"Sell" includes sell by wholesale or retail, and includes distribute for sale, expose or offer for sale or have in possession for sale or agree to sell, and includes barter, and includes supply by way of exchange, lease, hire or hire-purchase.

"State" means a State of Australia.

"Substantive Registration" means Registration under a Law of a Party, but does not include Deemed Registration;

(b) a reference to a Ministerial Council is a reference to a Council of Ministers, or any similar body such as a Standing Committee of Ministers, made up of some combination of the Governments of the Commonwealth the States and the Australian Capital Territory and the Northern Territory and New Zealand;

(c) a reference to a Recital is a reference to a Recital to this Arrangement;

(d) a reference to a Part is a reference to a Part of this Arrangement;

(e) a reference to a paragraph is a reference to a paragraph of this Arrangement;

(f) words importing the singular shall include the plural and vice versa; and

(g) a reference to a law in this Arrangement, including in its schedules, includes Regulations made under that law, or a provision of that law.

### PART III ESTABLISHMENT OF ARRANGEMENT

3.1 The Parties will, in accordance with this Arrangement, and upon the coming into force of the legislation applicable to each Party, observe the mutual recognition principles set out in Recital G and in the Australian Draft Bill and New Zealand Draft Bill.

3.2.1 The Commonwealth will submit to the Commonwealth Parliament legislation applicable:

(a) to each State the Parliament of which has enacted the legislation referred to in paragraph 3.2.2 that has come into force;

(b) to the Northern Territory and the Australian Capital Territory the Parliaments of which, as the case may be, have enacted the legislation referred to in paragraph 3.2.3 that has come into force;

in, or substantially in, the terms of the Australian Draft Bill and will use its best endeavours to secure the passage and Royal Assent of that legislation by 1 October 1996.

3.2.2 The States will submit to their respective Parliaments legislation in, or substantially in, the terms of the Australian Draft Bill and use their best endeavours to secure the passage and bringing into force of that legislation by 1 January 1997.

3.2.3 The Northern Territory and the Australian Capital Territory will submit to their respective Parliaments legislation whereby each of them requests or enables the enactment by the Commonwealth of a law for the respective Territory in, or substantially in, the terms of the Australian Draft Bill and will use their best endeavours to secure the passage and bringing into force of that legislation as applicable to each of them by 1 January 1997.

3.2.4 The Commonwealth will not submit to its Parliament any legislation which will, upon coming into force, repeal or amend the legislation referred to in sub-paragraph 3.2.1 except with the unanimous consent of the Australian Participating Parties.

3.3 New Zealand will submit to its Parliament legislation in, or substantially in, the terms of the New Zealand Draft Bill and use its best endeavours to secure passage and bringing into force of that legislation by 1 January 1997.

3.4 Those parts of the Arrangement not requiring legislation, such as the Cooperation Programmes outlined in Part IX and related Annexes, will take effect from the date the Parties sign the Arrangement. The Arrangement will become fully operational from the Date of Commencement and continue in force in the jurisdiction of the Participating Parties subject to being terminated by a Party under the terms of the Arrangement.

#### PART IV OPERATION OF THE SCHEME GOODS

4.1.1 Under this Arrangement, a Good that may legally be sold in the Jurisdiction of an Australian Party may legally be sold in New Zealand and a Good that may legally be sold in New Zealand may legally be sold in the Jurisdiction of any Australian Party. Goods need only comply with the standards or Regulations applying in the jurisdiction in which they are produced or through which they are imported. The understandings entered into under this principle are confined to the laws of each Party.

4.1.2 Under the principle referred to in sub-paragraph 4.1.1, mutual recognition will affect certain laws relating to the sale of Goods of the jurisdiction where the Goods are intended for sale. Such laws include:

- (a) Requirements relating to production, composition, quality or performance of a Good;
- (b) Requirements that a Good satisfy certain standards relating to presentation, such as packaging, labelling, date, or age stamping;
- (c) Requirements that Goods be inspected, passed or similarly dealt with; or
- (d) any other Requirement that would prevent or restrict, or would have the effect of preventing or restricting, the sale of the Good.

4.1.3 The Arrangement is not intended to affect the operation of any laws to the extent that they regulate:

(a) the manner of the sale of Goods or the manner in which sellers conduct or are required to conduct their business, so long as those laws apply equally to Goods produced or imported in the Jurisdiction of the Party. Examples include:

- (i) the contractual aspects of the sale of Goods;

- (ii) the registration of sellers or other persons carrying on occupations;
  - (iii) the requirements for business franchise licences;
  - (iv) the persons to whom Goods may or may not be sold; and
  - (v) the circumstances in which Goods may or may not be sold;
- (b) the transportation, storage or handling of Goods, so long as those laws apply equally to Goods produced or imported under the laws of the Party and so long as they are directed at matters affecting public health and safety or at preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution); or
- (c) the inspection of Goods, provided inspection is not a prerequisite to the sale of Goods, the laws apply equally to Goods produced or imported under the laws of the Party, and the laws are directed to protecting the health and safety of persons or to preventing, minimising or regulating environmental pollution.

4.1.4 Consistent with the mutual recognition principle set out above, the Parties intend that the Arrangement will not affect the operation of any law or regulation prohibiting or restricting the export of Goods from a Participating Party.

#### **Temporary exemptions**

4.2.1 The Parties may temporarily exempt a Good or a law relating to a Good from the operation of the Arrangement where such exemptions are substantially for the purpose of protecting the health and safety of persons or preventing, minimising or regulating environmental pollution. Such Temporary Exemptions will apply only to the laws of the Party or Parties which invoke them. It is intended that a Party will not be able to have a Good banned or restricted from sale in the jurisdiction of another Party.

4.2.2 It is intended that a Temporary Exemption for such a Good or law, or a series of consecutive Temporary Exemptions for the same Good or law, not apply for a period exceeding an aggregate maximum of 12 months. Prior to the expiration of the exemption relating to the Good, the relevant Ministerial Council(s) will endeavour to determine whether a standard should apply to the Good, and, if so, that standard. Alternatively, the Ministerial Council may recommend to Heads of Government that the Good or law be Permanently Exempted from the Arrangement.

#### **Referrals**

4.3 A Participating Party may, at any time and substantially for the purpose of protecting the health and safety of persons or preventing, minimising or regulating environmental pollution, refer the matter of the standard applicable to any Goods under the Jurisdiction of another Participating Party to the Ministerial Council having responsibility for such Goods. The Ministerial Council will endeavour to determine, within 12 months of receiving such a referral, whether or not a standard should be set with respect to the Good, and if so, that standard.

### **PART V OPERATION OF THE SCHEME OCCUPATIONS**

5.1.1 Under this Arrangement, a person who is Registered to practise an occupation under a law of an Australian Party will be entitled to practise an Equivalent occupation under the law of New Zealand and a person Registered to practise an occupation under a law of New Zealand will be entitled to practise an Equivalent occupation under the law of any Australian Party. As a condition of Registration the person seeking Registration will be required to lodge with the relevant Local Registration Authority a written notice containing certain basic information relating to his or her current Registration.

5.1.2 The Arrangement is not intended to affect the operation of laws that regulate the manner of carrying on an occupation, provided those laws:

- (a) apply equally to all persons carrying on or seeking to carry on the occupation; and

(b) are not based on the attainment or possession of some qualification or experience relating to fitness to practise the occupation.

### **Entitlement to Registration and continued Registration**

5.2.1 Subject to any exemptions under paragraph 5.11, a person who meets the criteria in paragraph 5.1.1 and who lodges a written notice with a Local Registration Authority of a Party will be entitled to be Registered in an Equivalent occupation, as if the relevant law of that Party expressly provided that the person's existing Registration is a sufficient entitlement to Registration.

5.2.2 The Local Registration Authority may Grant Registration on the basis of conformity with the requirements of the scheme and may Grant renewals of such Registration. Subject to the laws of the Registering jurisdiction, once substantively Registered, the entitlement to Registration continues, subject to paragraph 5.2.3, whether or not the person's Registration in his or her home jurisdiction ceases.

5.2.3 The Local Registration Authority may suspend or terminate Registration if it becomes aware that a person has had his or her Registration suspended or terminated in any jurisdiction or is otherwise personally prohibited from practising as a result of Criminal, Civil or disciplinary proceedings in any jurisdiction.

5.2.4 The Local Registration Authority may impose Conditions on Registration but only for the purpose of retaining conditions already applying to a person's previous Registration or which are necessary to achieve Equivalence between Occupations.

### **Action following notice**

5.3 It is intended by the Parties that Registration will be Granted to a person applying for such Registration within one month of lodgement by that person of the written notice with the Local Registration Authority. If granted, Registration will take effect from the date the notice was lodged. However, the Local Registration Authority may postpone or refuse the Grant of Registration within one month of the date the notice was lodged.

### **Postponement of Registration**

5.4.1 A Local Registration Authority may postpone, for a maximum of six months, the Grant of Registration if:

- (a) the statements, documents or information in the written notice are materially false or misleading;
- (b) the circumstances of the person lodging the notice have materially changed since the lodgement date; or
- (c) the Authority decides that the Occupation for which Registration is sought is not an Equivalent Occupation. In these cases, the Authority may impose conditions or limits on Registration in order to achieve Equivalence between the Occupations.

5.4.2 At or before the expiry of the period for postponement of Registration, the Local Registration Authority may Grant or refuse the Registration.

### **Refusal of Registration**

5.5.1 A Local Registration Authority may refuse the Grant of Registration if:

- (a) the statements, documents or information in the written notice are materially false or misleading; or
- (b) the Authority decides that the Occupation for which Registration is sought is not an Equivalent Occupation and Equivalence cannot be achieved by imposing conditions or limits on Registration.

5.5.2 A decision to refuse to Grant Registration on the grounds that the Occupation is not an Equivalent Occupation will take effect after a period of not less than two weeks after the person is notified Of the decision, unless the decision has been revoked or there is an application for review.

### **Deemed Registration**

5.6.1 A person who lodges a notice with a Local Registration Authority will be, pending the Grant or refusal of Registration, taken to have Deemed Registration.

5.6.2 Deemed Registration will continue until it is cancelled, suspended or otherwise ceases in accordance with the Arrangement. For example, Deemed Registration ceases if a person is Substantively Registered, refused Registration, ceases to be Substantively Registered in all other jurisdictions, or if it is cancelled at the person's request.

5.6.3 Deemed Registration is not affected by postponement of the Grant of Substantive Registration.

5.6.4 Persons with Deemed Registration may carry on their Occupation as if they had been Granted Substantive Registration subject to any conditions attaching to their existing Substantive Registration or to the Deemed Registration and subject to any requirements of Substantive Registration (for example, requirements regarding insurance, fidelity funds and trust accounts).

5.6.5 A Local Registration Authority may impose conditions (for example, to achieve Occupational Equivalence) as if Deemed Registration were Substantive Registration provided such conditions are not more onerous than would be imposed in similar circumstances (having regard to relevant qualifications or experience) if it were Registration effected apart from this Part.

### **Occupational Appeals**

5.7.1 Application may be made to an Appeals Tribunal for review of a decision of a Local Registration Authority in relation to its functions under this Arrangement subject to:

- (a) the Administrative Appeals Tribunal Act 1975, in respect of Australian Local Registration Authorities; and
- (b) the Trans-Tasman Occupations Tribunal provided for in the New Zealand Draft Bill, in respect of New Zealand Local Registration Authorities.

5.7.2 In paragraph 5.7.1, "decision" has the same meaning as in the Administrative Appeals Tribunal Act 1975.

5.7.3 When notifying a person of its decision in relation to an application for Registration under this Arrangement, a Local Registration Authority should advise that application for review may be made to the relevant Appeals Tribunal by a person whose interests are affected by the decision.

5.7.4 For the purpose of promoting consistency between decisions of the Australian Administrative Appeals Tribunal and the New Zealand Trans-Tasman Occupations Tribunal, each Tribunal will have regard to decisions made by the other and to the desirability of cross-membership of tribunals in cases where this is considered desirable. To formalise cooperative arrangements between the Parties, the Tribunals will enter into a Memorandum of Understanding to maximise cooperation and the exchange of information between them, at the earliest possible opportunity.

### **Review of Registration Authority decisions**

5.8.1 In reviewing the decision of a Local Registration Authority, a Tribunal may make an order that the appellant is entitled to Registration and may specify or describe conditions to achieve Equivalence. If Equivalence cannot be achieved by imposing conditions, the Tribunal may make an order that arrangements be put in place to enable Registration.

5.8.2 Alternatively, a Tribunal may make a declaration that the two Occupations are not Equivalent and the person is not entitled to Registration, but only if it is satisfied that:



- (a) the activities involved in the Occupations are not substantially the same (even with the imposition of conditions); or
- (b) Registration of the person could result in a real threat to public health and safety or could threaten significant environmental pollution.

5.8.3 A declaration pursuant to paragraph 5.8.2(b) will have effect for a period of 12 months. During this period, the Party in whose jurisdiction the declaration applies will refer the declaration to the Ministerial Council having responsibility for the Occupation, activity or class of activity. The Ministerial Council will endeavour to determine whether agreed standards, including agreed competency standards, should apply to the Occupation and, if so, what those standards should be.

### **Referrals**

5.9 A Participating Party may, at any time and substantially for the purpose of protecting the health and safety of persons or preventing, minimising or regulating environmental pollution, refer the matter of the appropriate competency standards required to entitle a person to carry on an Occupation or a particular activity as part of the practice of an Occupation to the relevant Ministerial Council for determination of whether agreed standards should apply to the Occupation, and, if so, those standards. The Council will endeavour to make a determination within 12 months of receiving such a referral.

### **Ministerial declarations**

5.10 A Minister from New Zealand and a Minister from at least one of the Australian Participating Parties may jointly declare that specified Occupations are Equivalent, and may specify or describe conditions that will achieve Equivalence. A Ministerial Declaration may be amended or rescinded in the same way and has effect only in relation to the Parties concerned. A Declaration can relate to the future and/or the past. It is intended that the appropriate Local Registration Authorities are to give effect to the Declaration. A Ministerial Declaration will prevail over any Appeals Tribunal decisions which are inconsistent with the Ministerial Declaration.

### **Exempt Occupations**

5.11 Occupations may be Exempted under the Arrangement with the unanimous agreement of the Participating Parties. A list of Exempt Occupations is at Schedule 4.

## **PART VI**

### **DETERMINATION OF STANDARDS OR REGULATIONS BY MINISTERIAL COUNCILS**

6.1 New Zealand will have full membership and voting rights on Ministerial Councils when Councils are dealing with matters pursuant to the Arrangement.

6.2 Standards for Goods and Occupations may be determined by Ministerial Councils under the terms of the Arrangement. Such determinations will be governed by the Principles and Guidelines for Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies endorsed by the Council of Australian Governments in April 1995.

6.3 A Ministerial Council determination in relation to a Temporary Exemption or referral for a Good or Occupation invoked by a Participating Party may be made upon a vote in its favour by not less than two-thirds of the total number of Participating Parties to the Arrangement represented on the relevant Ministerial Council. If more than one Ministerial Council has responsibility for an Occupation, a determination will be made upon a vote in its favour by not less than two-thirds of the Participating Parties, with each of the Parties to cast a single vote.

6.4 In determining standards, Ministerial Councils will, wherever possible, align such standards with those commonly accepted in international trade.

6.5 Upon the agreement of the relevant Ministerial Council(s) under the terms of this Arrangement that:

- (a) a particular standard or regulation (including whether the sale of any Goods should be prohibited) should be applicable to a Good; or

(b) agreed standards should be applicable with respect to an Occupation or a particular activity or class of activity as part of the practice of an Occupation;

the Ministerial Council(s) should recommend to the Heads of Government of the Participating Parties that the standard or regulations be agreed. Unless such a recommendation is disapproved by one third or more of the Heads of Government of the Participating Parties within three months of its submission to Heads of Government, the Participating Parties will, as soon as practicable, take such action as is necessary to implement the recommendation. Submissions to Heads of Government should be made through the Council of Australian Governments' Committee on Regulatory Reform or any alternative body agreed by Heads of Government.

6.6 If at any time a Ministerial Council has cause to consider the standard of a Good arising out of the operation of the Australian Mutual Recognition Agreement, the Chair of the Ministerial Council will consult with the New Zealand Minister on the Council with a view to determining whether the matter should be resolved in the context of this Arrangement. Such consultations should take place before any decision is taken in relation to the standard under consideration.

## PART VII EXCLUSIONS

7.1. The Parties have identified a number of laws which include requirements relating to the sale of Goods as set out in paragraph 4.1.2 that might otherwise be unintentionally affected by mutual recognition.

7.2 It is intended that laws falling within the following categories should be excluded from the Arrangement:

(a) Customs controls and tariffs - to the extent that Commonwealth and New Zealand laws provide for the imposition of tariffs and related measures (for example, anti-dumping and countervailing duties) and the prohibition or restriction of imports;

(b) intellectual property - to the extent that Commonwealth, State, Territory and New Zealand laws provide for the protection of intellectual property rights and relate to requirements for the sale of Goods;

(c) Commonwealth, State, Territory and New Zealand taxation - to the extent that the laws provide for the imposition of taxes on the sale of locally produced and imported goods in a non-discriminatory way including, for example, Wholesale Sales Tax (Commonwealth), business franchise fees and stamp duties (States and Territories) and Goods and Services Tax (New Zealand); and

(d) other specified international obligations to the extent that Commonwealth and New Zealand laws implementing those obligations deal with the requirements relating to sale of goods.

7.3 A list of these laws falling within the scope of paragraph 7.2 is contained in Schedule 1. Amendments to the laws specified in Schedule 1 and any further laws, which fall within the scope of the laws described in paragraph 7.2, may also be excluded from the Arrangement. Any such amendments and laws will be duly notified by the relevant Party to all other Participating Parties.

7.4 Additions to the categories of excluded laws described in paragraph 7.2 require the unanimous agreement of the Heads of Government of the Participating Parties.

## PART VIII PERMANENT EXEMPTIONS

8.1 The Parties have identified a number of areas of Goods regulation that are potentially covered by the mutual recognition principle, but for which the Parties have determined that mutual recognition should not apply. These have been termed 'permanent exemptions'. The areas of regulation to be permanently exempted from the operation of the Arrangement are set out in Schedule 2. The laws in Schedule 2 are exempt from the Arrangement to the extent that they deal with the requirements relating to the sale of goods set out in paragraph 4.1.2 of the Arrangement.

8.2 Additions to the list of laws in Schedule 2 require the unanimous consent of the Heads of Government of the Participating Parties. In their deliberations, Heads of Government may take into account such matters as they consider relevant, including any recommendation of a Ministerial Council.

8.3 Unless otherwise stated, a law described in Schedule 2 includes any amendment or replacement of that law, but only to the extent that the amendment or replacement does not expand the scope of the exemption as at the Date of Commencement of the Arrangement.

## PART IX PROGRAMMES FOR TRANS-TASMAN COOPERATION

### **Cooperation Programmes**

9.1.1 For the categories of Goods specified in paragraph 9.1 .3 below, which are the subject of significant differences in regulation, programmes for trans-Tasman cooperation will be undertaken.

9.1.2 The objective of these Cooperation Programmes is to expedite the examination of differences in regulatory Requirements between the Parties, with a view to addressing them through either mutual recognition, harmonisation or permanent exemption. In seeking to achieve this objective, the Parties will have regard to:

- (a) the *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies* endorsed by the Council of Australian Governments in April 1995;
- (b) international regulatory best practice; and
- (c) the level of risk to public health and safety and the environment.

9.1.3 Programmes for trans-Tasman cooperation will be undertaken in the following areas:

- (a) Therapeutic Goods;
- (b) Hazardous substances, industrial chemicals and dangerous Goods;
- (c) Electromagnetic compatibility and radiocommunications standards;
- (d) Road vehicles; and
- (e) Gas appliances.

9.1.4 The Parties note that trans-Tasman cooperation, including harmonisation, is already taking place in a number of areas in addition to those identified above, and it is intended that this will continue expeditiously.

9.1.5 In some areas subject to Cooperation Programmes, it may not be possible to complete these Programmes within the timeframe for commencement of the Arrangement and extensions available through use of the Temporary Exemption mechanism. To allow additional time for the completion of Cooperation Programmes, the areas of regulation covered by Annexes 1 to 5 will be eligible for a Special Exemption.

### **Special Exemptions**

9.2.1 It is intended that the operation of the Arrangement in respect of the areas set out in paragraph 9.1.3 be delayed while Cooperation Programmes are undertaken. To achieve this, a 12 month Special Exemption will apply from the Date of Commencement of the Arrangement to the laws which underpin the regulatory controls in the areas referred to in paragraph 9. 1.3, and which are specified in the Annexes. A list of the laws for which Special Exemption will apply is at Schedule 3.

9.2.2 Special Exemptions will apply only to those regulatory Requirements covered by the Cooperation Programmes as set out in the relevant Annexes to this Arrangement. As arrangements are agreed for specific areas of regulation covered by each Cooperation Programme, the pertinent sections of the relevant laws may be removed from the Special Exemption category at any time on a vote of not less than two thirds of the Heads of Government of the Participating Parties after which mutual recognition or harmonisation will apply.

9.2.3 Further Special Exemptions, of 12 months duration in each instance, may be sought to complete a Cooperation Programme, through a joint Annual Cooperation Report prepared by the relevant regulatory authorities to Heads of Government by the relevant Ministerial Council(s). on the agreement of not less than two-thirds of Heads of Government, the Participating Parties will determine if a further Special Exemption should apply or if the mutual recognition principle set out in this Arrangement should operate. Permanent Exemption for laws for which Special Exemption applies, can be sought:

- (a) at any time on the unanimous agreement of the Heads of Government of the Participating Parties;  
or
- (b) after a period of not less than five years after the Date of Commencement of the Arrangement on the agreement of not less than two-thirds of the Heads of Government of the participating Parties.

9.2.4 When the Cooperation Programmes provided for in Annexes 1 to 5 of the Arrangement are complete, Heads of Government of the Participating Parties will determine at the time of the next general review of the Arrangement whether the Special Exemption mechanism provided for in this Part should be retained as a feature of the Arrangement.

### **Annual Cooperation Reports**

9.3.1 Regulatory authorities will, through the relevant Ministerial Council(s), provide to Heads of Government an Annual Cooperation Report outlining progress made and the programme and timelines for further work. The Reports will also nominate the sections of the relevant laws referred to in Schedule 3 for which Special Exemption is no longer required. If a Special Exemption is to be maintained in order to undertake further work, the Report will provide Heads of Government with supporting evidence for such a continuation. A Cooperation Report will be due three months before the first anniversary of the Date of Commencement of the Arrangement and subsequently at 12 month intervals until the Cooperation Programme has been completed.

## **PART X TRANS-TASMAN COOPERATION APART FROM THE ARRANGEMENT**

10.1 The exemption of laws relating to goods and occupations provided for in the Schedules to this Arrangement will not affect the operation of any other trans-Tasman harmonisation or mutual recognition arrangements between the Participating Parties which exist or are being pursued outside the auspices of this Arrangement. The Participating Parties acknowledge the importance of maintaining and further developing such arrangements consistent with mutual recognition objectives.

## **PART XI INSTITUTIONAL ARRANGEMENTS FOR HEADS OF GOVERNMENT**

11.1 The key institution for Heads of Government decision making in Australia on matters other than general financial arrangements is the Council of Australian Governments. The Council of Australian Governments deliberates on and executes its responsibilities at formal meetings as well as by correspondence exchanged out of session. New Zealand will participate fully in the deliberations and decisions of the Council of Australian Governments on matters affecting the operation of the Arrangement. Accordingly, the responsibilities of Heads of Governments under the Arrangement will be fulfilled under the auspices of the Council of Australian Governments.

## **PART XII**

## REVIEW OF THE ARRANGEMENT

### General review

12.1.1 The Parties will undertake a general review of the operation of the Arrangement and its related legislation in 2003 or in conjunction with the second review of the Australian Mutual Recognition Agreement, whichever comes first. This will align future reviews of both the TTMRA and the MRA which will thereafter take place at five yearly intervals.

12.1.2 The general review will assess the effectiveness of the arrangements in fostering and enhancing trade and workforce mobility between Australia and New Zealand and should consider whether any changes to the Arrangement or related legislation are required to improve the operation or coverage of the Arrangement.

12.1.3 The review should include an assessment of any amendments or additions to the laws in the Schedules to the Arrangement and comment on their consistency with the principles underpinning the Arrangement. It is the intention of the Parties to minimise, as far as possible, exemptions and exclusions from the Arrangement. The Participating Parties will also examine the scope for deletions from the schedules, consistent with the intention to minimise exemptions and exclusions from the Arrangement.

### Monitoring

12.2.1 The Heads of Government of the Participating Parties will monitor the effectiveness of the Arrangement, consider ways and means of facilitating the removal of laws relating to goods and occupations from the Schedules, and make resolutions as to the future operation of the Arrangement. In doing so, Heads of Government may request relevant Ministerial Councils to report on the effectiveness of the Arrangement in relation to Goods or Occupations for which they are responsible.

12.2.2 In addition to providing any report requested by Heads of Government, Ministerial Councils may also report on the effectiveness of the Arrangement and make recommendations to Heads of Government of the Participating Parties as to its future operation no later than six months before the time fixed for a general review of the Arrangement.

## PART XIII AMENDMENT OF SCHEDULES

13.1 As provided for elsewhere in the Arrangement, it is intended that the Designated Persons of the Participating Parties will be able to propose regulations to amend, or agree to the amendment of, the Schedules to the Arrangement and of the Commonwealth and New Zealand legislation implementing the Arrangement.

13.2 Any regulation to amend or add to Schedules 2 and 4 of the Arrangement and the Commonwealth and New Zealand legislation may only be made if the Designated Person of each of the Participating Parties has published a notice in the official gazette of the jurisdiction agreeing that the proposed regulation be made.

13.3 Schedule 1 of the Arrangement and of the Commonwealth and New Zealand legislation may be amended in accordance with the provisions of this Part and of paragraphs 7.3 and 7.4.

13.4 Schedule 3 of the Arrangement and the Commonwealth and New Zealand legislation may be amended in accordance with the provisions of this Part and of paragraph 9.2.3.

13.5 A Participating Party may, through regulation, unilaterally delete a law of its jurisdiction from the Schedules at any time.

## PART XIV AMENDMENT OF LEGISLATION

14 A Participating Party wishing to expressly or impliedly amend the legislation implementing the Arrangement in its jurisdiction in a way that potentially affects the operation of the Arrangement,

should give notice in writing to the other Participating Parties not less than 12 months before the proposed date of amendment, advising them of the reasons for the Party's decision to amend its legislation implementing the Arrangement.

## PART XV WITHDRAWAL FROM THE ARRANGEMENT

15 The Arrangement will continue in force in the Jurisdiction of a Participating Party subject to being terminated by that Party. A Party wishing to withdraw from the Arrangement should give notice in writing to the other Participating Parties not less than 12 months before the proposed date of withdrawal, advising them of the reasons for the Party's decision to terminate its Participation in the Arrangement.

## SCHEDULE 1 EXCLUSIONS

In accordance with Part VII of the Arrangement, the following laws will be subject to Exclusion to the extent that they are covered by the mutual recognition principle as set out in paragraph 4.1.2:

### *Australia*

#### **Customs controls and tariffs**

##### *Prohibited imports*

Customs (Prohibited Imports) Regulations.  
Commerce (Trade Descriptions) Act 1905.  
Any other laws of the Commonwealth to the extent that they provide for the prohibition or restriction of imports and would be affected by the mutual recognition principle as set out in paragraph 4.1.2.

##### *Tariffs*

Customs Tariff Act 1987.  
Customs Act 1901, Part XV B.  
Customs Tariff (Anti-Dumping) Act 1975

#### **Intellectual property (including obligations under the Paris Convention of 20 March 1983 for the Protection of Industrial Property)**

Patents Act 1990.  
Trade Marks Act 1995.  
Designs Act 1906.  
Olympic Insignia Protection Act 1987.  
Scout Association Act 1924.  
Defence (Transitional Provisions) Act 1946.  
Defence Transition (Residual Provisions) Act 1952.  
Plant Breeders' Rights Act 1994.  
Copyright Act 1968.  
Circuit Layouts Act 1989.  
Ambush Marketing Bill 1995.

Unauthorised Documents Act 1922 (New South Wales).  
Unauthorised Documents Act 1958 (Victoria).  
Badge, Arms, Floral and other Emblems of Queensland Act 1959-81 (Queensland).  
Unauthorised Documents Act 1916 (South Australia).  
Armorial Bearings Protection Act 1979 (Western Australia).  
Unauthorised Documents Act 1986 (Tasmania).  
City of Canberra Arms Act 1932 (Australian Capital Territory).  
Flags and Emblem Act 1985 (Northern Territory).

## **Other international obligations**

*Convention on International Trade in Endangered Species of Wild Fauna and Flora* as implemented by the Wildlife Protection (Regulation of Exports and Imports) Act 1982, sections 21 and 22.

*Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal 1989* as implemented by the Hazardous Waste (Regulation of Exports and Imports) Act 1989, sections 12, 14, 15, 17, 18B, 20, 24-31, 34 and 39.

*Charter of the United Nations* (as it relates to the imposition of UN Sanctions) as implemented by the:

Charter of the United Nations Act 1945, section 6;  
Air Navigation Act 1920, section 26;  
Banking Act 1959, section 71;  
Migration Act 1958, sections 31(3), 116(1)(g) and 504; and  
Customs Act 1901, section 50.

*United Nations Educational, Scientific and Cultural Organisation (UNESCO) Convention Regulating the International Trade in Cultural Property 1970* as implemented by the Protection of Movable Cultural Heritage Act 1986.

*European Union-Australia Wine Agreement - Protection of Certain Names and Expressions* as implemented by the Australian Wine and Brandy Corporation Act 1980 (as amended) Part VIB and Part VIA (Label Integrity Programme).  
Australian Wine and Brandy Corporation Regulations, Parts 3 and 4.

## **Taxation law**

Sales Tax Assessment Act 1992.  
Sales Tax (Exemption and Classification) Act 1992.

Laws of a State imposing or providing for the imposition of taxation, including stamp duties, and providing for business licences.

## ***New Zealand***

### **Customs controls and tariffs**

#### *Prohibited imports*

Customs Act 1966, section 48 and Schedule 1 (Prohibited Imports).  
Fair Trading Act 1986, section 26 (goods bearing false trading descriptions deemed to be prohibited imports).  
Any other law of New Zealand to the extent that it provides for the prohibition or restriction of imports and would be affected by the mutual recognition principle as set out in paragraph 4.1.2.

#### *Tariffs*

Tariff Act 1988.  
Dumping and Countervailing Duties Act 1988.  
Temporary Safeguard Authorities Act 1987.

### **Intellectual property (including obligations under the Paris Convention of 20 March 1983 for the Protection of Industrial Property).**

Patents Act 1953.  
Trade Marks Act 1953.  
Designs Act 1953.  
Plant Variety Rights Act 1987.  
Copyright Act 1994.  
Layout Designs Act 1994.  
Geographical Indications Act 1994.

Flags, Emblems and Names Protection Act 1981.  
Geneva Conventions Act 1958, section 8 (protection of Red Cross emblem).  
The Commonwealth Games Symbol Protection Act 1974.

#### **Other international obligations**

*Convention on International Trade in Endangered Species of Wild Fauna and Flora* as implemented by the Trade in Endangered Species Act 1989 and the Wildlife Act 1953.

Charter of the United Nations as implemented by the United Nations Act 1946.

#### **Taxation law**

Goods and Services Tax Act 1985.  
Gaming Duties Act 1971.  
Stamp and Cheque Duties Act 1971.  
Estate and Gift Duties Act 1968.

### SCHEDULE 2 PERMANENT EXEMPTIONS

**In accordance with Part VIII of the Arrangement, the following laws will be subject to Permanent Exemption to the extent that they are covered by the mutual recognition principle as set out in paragraph 4.1.2:**

#### **Part A: Laws relating to Goods - General**

##### *Quarantine*

1.1 A law of a Party, including a law relating to quarantine, that is enacted or made substantially for the purpose of preventing the entry or spread of any pest, disease, organism, variety, genetic disorder or any other similar thing.

1.2 Any measures in paragraph 1.1 of this Part applied by the Parties will not be used as a means of arbitrary or unjustifiable discrimination or as a disguised restriction on trade between Australia and New Zealand and will be consistent with the requirements of the Agreement establishing the World Trade Organisation.

##### *Endangered species*

2. A law of a Party to the extent that it is enacted or made substantially for the purpose of protecting a species or other class of animals or plants from extinction in its Jurisdiction and that it prohibits or restricts the possession, sale, killing or capture of animals or plants of that species or other class of animal in its Jurisdiction.

#### **Part B: Laws relating to Goods - Specific**

##### **The Commonwealth of Australia**

##### *Firearms*

Import prohibitions in force through Customs (Prohibited Imports) Regulations.

##### *Fireworks*

Import prohibitions in force through Customs (Prohibited Imports) Regulations.

##### *Indecent material*



Classification (Publications, Films and Computer Games) Act 1995.

*Ozone protection*

Ozone Protection Act 1989 (as amended).

*Agricultural and veterinary chemicals*

Agricultural and Veterinary Chemicals Act 1994.

Agricultural and Veterinary Chemicals Code Act 1994 (as amended).

*Other*

Imported Food Control Act 1992 (only risk categorised food commodities).

**The Government of New Zealand**

*Firearms*

Arms Act 1938.

*Fireworks*

Explosives Act 1957, classes six (ammunition) and seven (fireworks) of the Schedule to the Act.

*Gaming machines*

Gaming and Lotteries Act 1977.

*Indecent material*

Films, Videos and Publications Classifications Act 1993.

Crimes Act 1961, section 124 (sale of indecent matter).

*Ozone protection*

Ozone Layer Protection Act 1990.

*Agricultural and veterinary chemicals*

Animal Remedies Act 1967.

Antiquities Act 1975.

*Other*

Radiation Protection Act 1965.

**New South Wales**

*Firearms*

Firearms Act 1989.

*Fireworks*

Dangerous Goods Act 1975 (to the extent that it deals with fireworks).

*Gaming machines*

Registered Clubs Act 1976, Parts 10 and 11.

*Indecent material*

Film and Video Tape Classification Act 1984  
Indecent Articles and Classified Publications Act 1975.

*Ozone protection*

Ozone Protection Act 1989.

**Victoria**

*Firearms*

Firearms Act 1958.  
Firearms Regulations 1995.  
Control of Weapons Act 1990.  
Control of Weapons Regulations 1990.

*Fireworks*

Dangerous Goods Act 1985, Dangerous Goods (Explosives) Regulations 1988, Part 8, Division 5.

*Gaming machines*

Gaming Machine Control Act 1991.

*Indecent material*

Classification (Publications, Films, Computer Games) (Enforcement) Act 1995.

*Ozone protection*

Environment Protection Act 1970, section 16 (in relation to ozone depleting substances), paragraphs 41(2)(d) and 71(1)(gba).

**Queensland**

*Firearms*

Weapons Act 1990.

*Fireworks*

Explosives Act 1952 (to the extent that it deals with fireworks).

*Indecent material*

Classification of Films Act 1991.  
Classification of Publications Act 1991.

*Gaming machines*

Gaming Machine Act 1991.

*Ozone protection*

Environmental Protection (Interim) Regulation 1995 under the Environmental Protection Act 1994

**South Australia**

*Firearms*

Firearms Act 1977.  
Firearms Regulations 1993 \*

Summary Offences Act 1983, section 15.  
Criminal Law Consolidation Act 1935, sections 32, 47A and 299A.

*Fireworks*

Explosives Act 1936 (to the extent that it deals with fireworks).

*Gaming machines*

Gaming Machines Act 1992.  
Gaming Machines Regulations 1993.

*Indecent material*

Classification (Publications, Films and Computer Games) Act 1995.  
Summary Offences Act 1953, sections 33 and 35.

*Ozone protection*

Environment Protection Act 1993 Part 8 Division 3.

*Other*

Environment Protection Act 1993 Part 8 Division 2 (covers the former Beverage Container Act 1975).

**Western Australia**

*Firearms*

Firearms Act 1973.

*Fireworks*

Explosives and Dangerous Goods Act 1961 (to the extent that it deals with fireworks).

*Gaming machines*

Gaming Commission Act 1987.

*Indecent material*

Censorship of Films Act 1947.  
Indecent Publications and Articles Act 1902.  
Video Tapes Classification and Control Act 1987.

*Ozone protection*

Environmental Protection Act 1986 (to the extent that it relates to ozone protection).

**Tasmania**

*Firearms*

Guns Act 1991 (as amended).

*Fireworks*

Dangerous Goods Act 1976 (to the extent that it deals with fireworks).

*Gaming machines*

Gaming Control Act 1993 (to the extent that it deals with gaming machines).

*Indecent material*

Classification (Publications, Films and Computer Games) Enforcement Act 1995.

*Ozone protection*

Chlorofluorocarbons and other Ozone Depleting Substances Control Act 1988.

*Other*

Living Marine Resources Management Act 1995 (to the extent that it relates to the possession, sale or capture of abalone, crayfish or scallops of a certain minimum size).

**Australian Capital Territory**

*Firearms*

Weapons Act 1991.

*Fireworks*

Dangerous Goods Act 1975 (NSW) in its application in the Australian Capital Territory (to the extent that it deals with fireworks).

*Gaming machines*

Gaming Machines Act 1987.

*Indecent material*

Business Franchise ("X" Videos) Act 1990.  
Classification (Publications, Films and Computer Games) (Enforcement) Bill 1995.

*Environment*

Ozone Protection Act 1991.

**Northern Territory**

*Firearms*

Firearms Act 1992.

*Fireworks*

Dangerous Goods Act 1985 (to the extent that it deals with fireworks).

*Indecent material*

Classification of Publications and Films Act 1985.

*Gaming machines*

Gaming Control Act 1993.

*Ozone protection*

Ozone Protection Act 1990.

**In accordance with Part IX and Annexes 1 to 5 of the Arrangement, the following laws will be subject to Special Exemption:**

**Therapeutic Goods**

*Australia*

Therapeutic Goods Act 1989 (Commonwealth).  
Therapeutic Goods (Charges) Act 1989 (Commonwealth).

The following laws are subject to Special Exemption to the extent that they deal with packaging and labelling of pharmaceutical drugs and would be affected by this Arrangement:

Poisons Act 1966 (New South Wales);  
Drugs Poisons and Controlled Substances Act 1981 (Victoria);  
Poisons Regulations 1973 under the Health Act 1937 (Queensland);  
Controlled Substances Act 1984 (South Australia);  
Poisons Act 1964 (Western Australia);  
Poisons Act 1971 (Tasmania);  
Poisons and Dangerous Drugs Act (Northern Territory); and  
Poisons and Drugs Act 1978 (Australian Capital Territory).

*New Zealand*

Medicines Act 1981.  
Misuse of Drugs Act 1975.  
Dietary Supplements Regulations 1985.

**Hazardous substances, industrial chemicals and dangerous goods**

*Australia*

The following laws are subject to Special Exemption to the extent that they deal with packaging and labelling of hazardous substances, industrial chemicals and dangerous goods and would be affected by this Arrangement:

Poisons Act 1966 (New South Wales);  
Drugs Poisons and Controlled Substances Act 1981 (Victoria);  
Poisons Regulations 1973 under the Health Act 1937 (Queensland);  
Controlled Substances Act 1984 (South Australia);  
Poisons Act 1964 (Western Australia);  
Poisons Act 1971 (Tasmania);  
Poisons and Dangerous Drugs Act (Northern Territory); and  
Poisons and Drugs Act 1978 (Australian Capital Territory).  
Industrial Chemicals (Notification and Assessment) Act 1989 (Commonwealth);  
Occupational Health and Safety (Commonwealth Employment) Act 1991 (Commonwealth);  
Workplace Hazardous Substances Regulations 1995 (Commonwealth);  
Road Transport Reform (Dangerous Goods) Act 1995 (Commonwealth);  
Work Health Act 1986 (Northern Territory);  
Work Health (Occupational Health and Safety) Regulations 1992 (Northern Territory);  
Dangerous Goods Act (and Regulations) 1980 (Northern Territory);  
Occupational Safety and Health Act 1984 (Western Australia);  
Occupational Safety and Health Regulations 1988 (Western Australia),  
Explosives and Dangerous Goods Act 1961 (Western Australia);  
Occupational Health and Safety Act 1983 (New South Wales);  
Occupational Health and Safety (Hazardous Substances) Regulations 1996 (New South Wales);  
Occupational Health and Safety (Carcinogenic Substances) (Transitional) Regulation 1994 (New South Wales);  
Dangerous Goods Act 1975 (New South Wales);  
Dangerous Goods Regulations 1978 (New South Wales);  
Dangerous Goods (Gas Installations) Regulation 1982 (New South Wales).  
Factories Shops and Industries Act 1962 (New South Wales);  
Dangerous Substances Act 1979 (South Australia);

Occupational Health, Safety and Welfare Act 1986 (South Australia);  
Occupational Health, Safety and Welfare Regulations 1995 (South Australia);  
Occupational Health and Safety Act 1985 (Victoria);  
Occupational Health and Safety Regulations (Victoria)  
Workplace Health and Safety Act 1995 (Queensland);  
Workplace Health and Safety Regulations 1989 (Queensland);  
Workplace Health and Safety Regulations 1995 (Queensland);  
Workplace Health and Safety (Hazardous Substances) Compliance Standard 1995 (Queensland);  
Workplace Health and Safety (Lead) Compliance Standard 1995 (Queensland);  
Workplace Health and Safety Act 1995 (Tasmania);  
Occupational Health and Safety Act 1989 (Australian Capital Territory);  
Occupational Health and Safety Regulations (Australian Capital Territory); and  
Hazardous Substances Regulations (Australian Capital Territory).

*New Zealand*

Hazardous Substances and New Organisms Act 1996.

**Electromagnetic compatibility and radiocommunications equipment**

*Australia*

Radiocommunications Act 1992 of the Commonwealth.

*New Zealand*

Radiocommunications (Radio) Regulations 1993, Part V.

**Road vehicles**

*Australia*

Motor Vehicle Standards Act 1989.

*New Zealand*

Goods Service Vehicle (Constructional) Regulations 1936.  
Transport Act 1962.  
Heavy Motor Vehicle Regulations 1974.  
Traffic Regulations 1976.  
Road User Charges Act 1977.  
Road User Charges Regulations 1978.  
Transport Services Licensing Act 1989.  
Transport (Vehicle Standards) Regulations 1990.  
Land Transport Act 1993.

**Gas appliances**

*Australia*

Gas Act 1986 (New South Wales).  
Gas and Fuel Corporation Act 1958, Gas Industry Act 1994 (Victoria).  
Gas Act 1965 (Queensland).  
Gas Act 1988 (South Australia).  
Gas Standards Act 1972 (to the extent that it relates to regulation of gas appliances) (Western Australia)  
Dangerous Goods Act 1972 (to the extent that it relates to regulation of gas appliances) (Tasmania).  
Dangerous Goods Act 1980 (to the extent that it relates to regulation of gas appliances) (Northern Territory).  
Gas Act 1992, Dangerous Goods Act 1984 (to the extent that it relates to regulation of gas appliances) (Australian Capital Territory).

*New Zealand*

Gas Act 1992.

#### SCHEDULE 4 EXEMPT OCCUPATIONS

In accordance with paragraph 5.11 of the Arrangement, the following occupations or certain classes of persons will be subject to exemption:

Medical practitioners registered in Australia or New Zealand under the:

- (a) New Zealand Medical Practitioners Act 1968;
- (b) Medical Practice Act 1992 (New South Wales);
- (c) Medical Practice Act 1994 (Victoria);
- (d) Medical Act 1939 (Queensland);
- (e) Medical Practitioners Act 1983 (South Australia);
- (f) Medical Act 1894 (Western Australia);
- (g) Medical Act 1959 (Tasmania);
- (h) Medical Practitioners Act 1930 (Australian Capital Territory); and
- (i) Northern Territory of Australia Medical Act 1995.

#### ANNEX 1 THERAPEUTIC GOODS

1.1 A Cooperation Programme covering regulatory Requirements for Therapeutic Goods will be pursued under the auspices of this Arrangement and in conformance with the provisions of Part IX. For the purposes of the Arrangement, "Therapeutic Goods" means those Goods as defined in the Commonwealth Therapeutic Goods Act 1989. The two main options for cooperation are mutual recognition or harmonisation.

1.2 The Parties note that it may not be possible to put in place cooperative arrangements within the existing timeframe for commencement of the Arrangement, including extensions available through the Temporary Exemption mechanism, and that additional time to complete the Cooperation Programme will be needed. This possibility is in part due to the pending introduction of new legislation in New Zealand covering therapeutic products and potential changes to regulatory arrangements in Australia arising out of Australian Governments' response to the Industry Commission inquiry into the Pharmaceutical Industry.

##### **Coverage of existing regulatory requirements**

1.3 The regulatory Requirements for Therapeutic Goods falling within the scope of this annex include, but are not limited to:

- product standards;
- manufacturing standards;
- conformance assessment requirements; and
- packaging and labelling standards.

1.4 The Cooperation Programme will also cover Requirements for the registration or listing of all products on the Australian Register of Therapeutic Goods and any similar New Zealand Requirements.

##### **Institutional Arrangements**

1.5 A Memorandum of Understanding (MOU) was signed in 1993 between the Commonwealth Department of Human Services and Health and the New Zealand Ministry of Health. The Parties agree that the inclusion of Therapeutic Goods under the TTMRA and the Cooperation Programme outlined in this annex constitutes a logical extension of the MOU. The Parties to the MOU will determine what, if any, further institutional arrangements need to be put in place to assist in achieving the objectives set out in this Annex.

1.6 Consistent with the Arrangement, New Zealand will participate fully in all relevant Ministerial Councils and related committees in respect of TTMRA issues. New Zealand is already a full member of the Australian Health Ministers Conference (AHMC), which deals with matters relating to Therapeutic Goods, as well as the related committee of officials, the Australian Health Ministers Advisory Committee (AHMAC). New Zealand will be a full member of the National Coordinating Committee on Therapeutic Goods, a standing committee of AHMAC, as well as the Australian Therapeutic Goods Committee. Classification, as well as some labelling and packaging Requirements for therapeutic drugs, is the responsibility of the National Drugs and Poisons Schedule Committee (NDPSC) which also reports to the Australian Health Ministers' Advisory Council (AHMAC). New Zealand is represented on NDPSC.

### **Legislation subject to Special Exemption**

#### *Australia*

Therapeutic Goods Act 1989 (Commonwealth).  
Therapeutic Goods (Charges) Act 1989 (Commonwealth).

The following laws are subject to Special Exemption to the extent that they deal with packaging and labelling of pharmaceutical drugs and would be affected by this Arrangement:

Poisons Act 1966 (New South Wales);  
Drugs Poisons and Controlled Substances Act 1981 (Victoria)  
Poisons Regulations 1973 under the Health Act 1937 (Queensland);  
Controlled Substances Act ~984 (South Australia);  
Poisons Act 1964 (Western Australia);  
Poisons Act 1971 (Tasmania);  
Poisons and Dangerous Drugs Act (Northern Territory); and  
Poisons and Drugs Act 1978 (Australian Capital Territory).

#### *New Zealand*

Medicines Act 1981.  
Misuse of Drugs Act 1975.  
Dietary Supplements Regulations 1985.

## ANNEX 2 HAZARDOUS SUBSTANCES, INDUSTRIAL CHEMICALS AND DANGEROUS GOODS

2.1 A Cooperation Programme covering certain regulatory Requirements relating to hazardous substances, industrial chemicals and dangerous Goods will be pursued under the auspices of this Arrangement and in conformance with the provisions of Part IX. The two main options for cooperation are mutual recognition or harmonisation.

### **Coverage of existing regulatory requirements**

2.2 A number of areas of regulation have been identified for which cooperative arrangements might be concluded. These are regulatory Requirements covering the: packaging and labelling of hazardous substances and dangerous Goods; and notification and assessment of industrial chemicals.

2.3 The Parties note that it may not be possible to develop cooperative arrangements in all areas due to differences in the operating environment between Australia and New Zealand. The Parties intend, however, that in most cases the arrangements developed should be capable of handling such country-specific Requirements.

2.4 For a number of reasons it may not be possible to complete the Cooperation Programme within the timeframe proposed for the commencement of this Arrangement. New Zealand is currently considering the introduction of new legislation in this area and regulatory arrangements in Australia may change depending on the response of Australian Governments to recommendations arising from the Industry Commission's inquiry into Work, Health and Safety.



## **Institutional arrangements**

2.5 Australia and New Zealand signed an Arrangement on Cooperation in Occupational Health and Safety in 1992. The Parties consider that the TTMRA and the Cooperation Programme contained in this Annex constitute a logical extension of the 1992 Arrangement on Cooperation. Cooperation is facilitated by New Zealand's observer status on a number of bodies of the Australian National Occupational Health and Safety Commission (NOHSC), including the Standards Development Standing Committee (SDSC) and the National Information Coordinators Network.

2.6 The Parties intend that NOHSC and the New Zealand Ministries for the Environment and Health and the Department of Labour will put in place the necessary arrangements to pursue the Cooperation Programme and to ensure that appropriate institutional arrangements are established to oversight any harmonised regulations which are developed as a result of the Cooperation Programme.

2.7 In relation to standards developed under the Arrangement, SDSC and NOHSC decisions will be binding on the Australian Parties only. Consistent with the Arrangement, New Zealand will have full membership on the Labour Ministers Council (LMC) (and any other Council that deals with hazardous substances) in relation to TTMRA and related matters. (The LMC is the Ministerial Council responsible for NOHSC.) The LMC will be the decision-making body for the purposes of any trans-Tasman arrangements agreed between NOHSC and the relevant New Zealand authorities. Decisions by LMC made under the Arrangement will be based on a vote in favour of not less than two-thirds of the Participating Parties.

## **Legislation subject to Special Exemption**

### *Australia*

Poisons Act 1966 (New South Wales);  
Drugs Poisons and Controlled Substances Act 1981 (Victoria);  
Poisons Regulations 1973 under the Health Act 1937 (Queensland);  
Controlled Substances Act 1984 (South Australia);  
Poisons Act 1964 (Western Australia);  
Poisons Act 1971 (Tasmania);  
Poisons and Dangerous Drugs Act (Northern Territory); and  
Poisons and Drugs Act 1978 (Australian Capital Territory).

Industrial Chemicals (Notification and Assessment) Act 1989 (Commonwealth);  
Occupational Health and Safety (Commonwealth Employment) Act 1991 (Commonwealth);  
Workplace Hazardous Substances Regulations 1995 (Commonwealth);  
Road Transport Reform (Dangerous Goods) Act 1995 (Commonwealth);  
Work Health Act 1986 (Northern Territory);  
Work Health (Occupational Health and Safety) Regulations 1992 (Northern Territory);  
Dangerous Goods Act (and Regulations) 1980 (Northern Territory);  
Occupational Safety and Health Act 1984 (Western Australia);  
Occupational Safety anti Health Regulations 1988 (Western Australia);  
Explosives and Dangerous Goods Act 1961 (Western Australia);  
Occupational Health and Safety Act 1983 (New South Wales);  
Occupational Health and Safety (Hazardous Substances) Regulations 1996 (New South Wales);  
Occupational Health and Safety (Carcinogenic Substances) (Transitional) Regulation 1994 (New South Wales);  
Dangerous Goods Act 1975 (New South Wales);  
Dangerous Goods Regulations 1978 (New South Wales);  
Dangerous Goods (Gas Installations) Regulation 1982 (New South Wales).  
Factories Shops and Industries Act 1962 (New South Wales);  
Dangerous Substances Act 1979 (South Australia);  
Occupational Health, Safety and Welfare Act 1986 (South Australia);  
Occupational Health, Safety and Welfare Regulations 1995 (South Australia);  
Occupational Health and Safety Act 1985 (Victoria);  
Occupational Health and Safety Regulations (Victoria)  
Workplace Health and Safety Act 1995 (Queensland);  
Workplace Health and Safety Regulations 1989 (Queensland);  
Workplace Health and Safety Regulations 1995 (Queensland);

Workplace Health and Safety (Hazardous Substances) Compliance Standard 1995 (Queensland);  
Workplace Health and Safety (Lead) Compliance Standard 1995 (Queensland);  
Workplace Health and Safety Act 1995 (Tasmania);  
Occupational Health and Safety Act 1989 (Australian Capital Territory);  
Occupational Health and Safety Regulations (Australian Capital Territory); and  
Hazardous Substances Regulations (Australian Capital Territory).

*New Zealand*

Hazardous Substances and New Organisms Act 1996.

ELECTROMAGNETIC COMPATIBILITY AND RADIOCOMMUNICATIONS EQUIPMENT  
ANNEX 3

3.1 Cooperation Programme covering certain regulatory Requirements relating to electromagnetic compatibility (EMC) and radiocommunications equipment standards and the conformance assessment arrangements underpinning those standards will be pursued under the auspices of this Arrangement and in conformance with the provisions of Part IX. The two main options for cooperation are mutual recognition or harmonisation.

**Coverage of existing regulatory Requirements**

3.2 Two distinct areas of regulation are covered by this Annex:

- (a) electromagnetic compatibility (EMC) Requirements for all electrical products excluding radiocommunications equipment); and
- (b) regulatory Requirements for radiocommunications equipment (including EMC Requirements).

3.3 Parties note that total harmonisation or mutual recognition of standards is not possible due, for example, to differences in the bands of the spectrum allocated to each country under international agreements. The Parties consider, however, that such differences can be accommodated within the Cooperation Programme, for example, through agreement that certain Requirements be permanently exempt from the Arrangement. In Australia, this also includes EMC requirements put in place by bodies other than the Spectrum Management Agency.

**Institutional arrangements**

3.4 An exchange of letters in 1994 between the relevant Australian and New Zealand authorities proposed harmonisation in the area of radiocommunications equipment and EMC. At present, joint Australia-New Zealand standards for radiocommunications equipment and EMC have been and are being developed through joint committees of Standards Australia and Standards New Zealand. Some of these standards have been adopted in regulation on both sides of the Tasman; some others may be adopted in the future where appropriate.

**Legislation subject to Special Exemption**

*Australia*

Radiocommunications Act 1992 of the Commonwealth.

*New Zealand*

Radiocommunications (Radio) Regulations 1993, Part V.

ANNEX 4  
ROAD VEHICLES

4.1 A Cooperation Programme covering regulatory Requirements for road vehicles (including components) will be pursued under the auspices of this Arrangement and in conformance with the provisions of Part IX.

## **Coverage of existing regulatory requirements**

4.2 The Cooperation Programme will cover all road vehicle standards. The two main options for cooperation are mutual recognition or harmonisation. From the date of signing of the Arrangement, Australia and New Zealand will embark on a programme aimed, where appropriate, at harmonising Australian and New Zealand standards with the internationally recognised United Nations - Economic Commission for Europe (UN-ECE) standards, or those national or regional standards that are agreed by the Parties, and at developing consistent conformance assessment and certification requirements in both countries. This body of internationally harmonised standards is intended to form the basis of a set of trans-Tasman road vehicle standards. It is intended that, as far as possible, all vehicles would be certified against these trans-Tasman standards. All road vehicles certified as meeting these standards will be able to be freely traded between Australia and New Zealand.

4.3 those road vehicles approved before cooperative arrangements are put in place, and for those not intended for trans-Tasman trade (because of a desire to maintain unique national standards, for example, due to different operating environments in either country), Country-specific standards will continue to apply.

## **Institutional Arrangements**

4.4 The Ministerial Council on Road Transport (MCRT) has responsibility for endorsing regulatory proposals relating to road transport in Australia in accordance with the National Road Transport Commission Act 1991. It is intended the MCRT will remain the decision making body for the Australian Parties when deciding regulatory Requirements for Australia.

4.5 The Minister of Transport has responsibility for the regulatory requirements relating to road transport in New Zealand in accordance with the Land Transport Act 1993. It is intended that the Minister of Transport will remain responsible for decisions relating to transport regulatory Requirements for New Zealand.

4.6 It is intended that decisions relating to trans-Tasman regulatory proposals developed under this Cooperation Programme will be made by the ATC and that consistent with the Arrangement, New Zealand will have full membership of the ATC and the Standing Committee on Transport when dealing with TTMRA-related road transport matters. New Zealand will also have full membership status on Australia's Technical Liaison Group, which develops regulations, and on the Transport Agencies Chief Executives (TACE) committee.

4.7 The legislation establishing the NRTC and MCRT ceases to have effect on 15 January 1998. It is intended that the principle for New Zealand participation set out in paragraph 4.6 will be applied in the consideration of any arrangements put in place to replace or extend the Operations of the NRTC and/or MCRT and that, if appropriate, New Zealand membership of the MCRT and/or involvement in the NRTC will be considered at that time.

## **Legislation subject to Special Exemption**

### *Australia*

Motor Vehicle Standards Act 1989.

### *New Zealand*

Goods Service Vehicle (Constructional) Regulations 1936.

Transport Act 1962.

Heavy Motor Vehicle Regulations 1974.

Traffic Regulations 1976.

Road User Charges Act 1977.

Road User Charges Regulations 1978.

Transport Services Licensing Act 1989.

Transport (Vehicle Standards) Regulations 1990

Land Transport Act 1993.

ANNEX 5  
GAS APPLIANCE STANDARDS

5.1 A Cooperation Programme covering regulatory Requirements for gas appliances will be pursued under the auspices of this Arrangement and in conformance with the provisions of Part IX. The two main options for cooperation are mutual recognition or harmonisation.

**Coverage of existing requirements**

5.2 Regulatory Requirements covering safety standards and conformance assessment arrangements for gas appliances will be covered by the Arrangement subject to this Annex.

**Institutional Arrangements**

5.3 New Zealand is to be a full member of the Gas Technical Regulators Committee as well as the Energy Management Task Force and the National Appliance Energy Efficiency Coordinating Committee of the Australia and New Zealand Minerals and Energy Council. Appropriate consultation with key stakeholders will be undertaken by these Committees in the course of pursuing this Cooperation Programme.

**Legislation subject to Special Exemption**

*Australia*

Gas Act 1986 (New South Wales).

Gas and Fuel Corporation Act 1958 (to be repealed by 6 June 1996), Gas Industry Act 1994 (Victoria).

Gas Act 1965 (Queensland).

Gas Act 1988 (South Australia).

Gas Standards Act 1972 (to the extent that it relates to regulation of gas appliances) (Western Australia).

Dangerous Goods Act 1972 (to the extent that it relates to regulation of gas appliances) (Tasmania).

Dangerous Goods Act 1980 (to the extent that it relates to regulation of gas appliances) (Northern Territory).

Gas Act 1992, Dangerous Goods Act 1984 (to the extent that it relates to regulation of gas appliances) (Australian Capital Territory).

*New Zealand*

Gas Act 1992.

Signed for and on behalf of each of the Parties by

The Honourable John Winston Howard MP  
Prime Minister of the Commonwealth of Australia,  
on the 14 day of June 1996

The Honourable Robert John Carr MP  
Premier of the State of New South Wales,  
on the 14 day of June 1996

The Honourable Jeffrey Gibb Kennett MLA  
Premier of the State of Victoria,  
on the 14 day of June 1996

The Honourable Robert Edward Borbidge MLA  
Premier of the State of Queensland,  
on the 14 day of June 1996

The Honourable Richard Fairfax Court MLA  
Premier of the State of Western Australia,  
on the 14 day of June 1996

The Honourable Dean Craig Brown MP  
Premier of the State of South Australia,  
on the 14 day of June 1996

The Honourable Anthony Maxwell Rundle MHA  
Premier of the State of Tasmania,  
on the 14 day of June 1996

Kate Carnell MLA  
Chief Minister of the Australian Capital Territory,  
on the 14 day of June 1996

The Honourable Shane L Stone MLA  
Chief Minister of the Northern Territory of Australia,  
on the 14 day of June 1996

Rt Hon J B Bolger  
Prime Minister of New Zealand,  
on the 9 day of June 1996