

2. *Intergovernmental Agreement on Mutual Recognition (1992)*

## **AGREEMENT**

*Between*

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.

**RELATING TO MUTUAL RECOGNITION**

THIS AGREEMENT is made the eleventh day of May, 1992

Between:

- 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.

### **RECITALS:**

- A. The Heads of Government of the Parties to this Agreement have agreed to establish a scheme for implementation of mutual recognition principles for goods and occupations for the purpose of promoting the goal of freedom of movement of goods and service providers in a national market in Australia.
- B. The objectives of the scheme for implementation of mutual recognition principles are to facilitate:
  - a) the sale of goods in a State or Territory if the goods can be sold lawfully in another State or Territory; and
  - b) the carrying on of an occupation in a State or Territory by a person who is registered in connection with an equivalent occupation in another State or Territory.
- C. The Heads of Government have agreed that the mutual recognition principles should apply in all areas where achievement of national uniformity of regulations is not essential to the efficient working of the Australian economy and that national uniformity will apply where such is necessary to facilitate international trade.
- D. The mutual recognition principles agreed by the Parties are those set out in the Draft Commonwealth Bill.

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E. In implementing the scheme for the introduction of mutual recognition principles the Parties acknowledge that:

- a) the scheme only seeks to interfere with regulation by the States, the Northern Territory or the Australian Capital Territory in relation to goods in so far as the regulation effectively seeks to prohibit sale of such goods;
- b) the scheme does not seek to interfere with regulation by the States, the Northern Territory or the Australian Capital Territory of initial entry to, the conduct of, or practice in, occupations;
- c) goods may be exempted from the scheme either permanently, on unanimous agreement of the Heads of Government of the Participating Parties or for a maximum period of 12 months, but subject to the terms of this Agreement;
- d) laws may be exempted from the scheme, but subject to the terms of this Agreement; and
- e) occupations may be declared, as provided for in the Draft Commonwealth Bill, to be, or not to be, equivalent occupations.

F. The Parties have agreed that the scheme may best be implemented by:

- a) the enactment of legislation by the States in, or substantially in, the terms of the Draft State Bill;
- b) the enactment of legislation by the Northern Territory and the Australian Capital Territory 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 Bill contained in the Schedule to the Draft State Bill;
- c) the enactment by the Commonwealth of a law in, or substantially in, the terms of the Bill contained in the Schedule to the Draft State Bill.

NOW IT IS AGREED by the Parties as follows:

**PART I**

**INTERPRETATION**

1.1 In this Agreement, except where a contrary intention appears:

- a) "Australian Capital Territory" means the body politic established by the Australian Capital Territory (self Government) Act 1988 of the Parliament of the Commonwealth;
- b) "Commonwealth" means the Commonwealth of Australia;
- c) "Northern Territory" means the body politic established by the Northern Territory (Self-Government) Act 1978 of the Parliament of the Commonwealth;
- d) "State" means a State of the Commonwealth of Australia.

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

"Commonwealth Act" means the legislation of the Parliament of the Commonwealth that is provided for by clause 4.4 as amended from time to time consistently with this Agreement.

"Date of commencement of the Commonwealth Act" means, if some provisions of the Commonwealth Act commence before others, the date of commencement of the firstmentioned provisions.

"Draft Commonwealth Bill" means the Bill, as amended from time to time consistently with this Agreement, contained in the Schedule to the Draft State Bill.

"Draft State Bill" means the Bill, as amended from time to time consistently with this Agreement, contained in Appendix 1 to this Agreement.

"National Competency Standards" mean those standards, accepted or endorsed at a national level, or which, when developed, are intended to be accepted or endorsed at a national level (and whether such acceptance or endorsement is, or is intended to be, from the National Training Board, National Office of Overseas Skills Recognition, a professional or occupational body or a Ministerial Council; which specify the knowledge and skill required in, and the application of

that knowledge and skill to the standard of performance required in, the carrying on of the occupation to which such standards relate.

“Participating Party” means any Party which has secured the passage or the making of the legislation, relevant in its case, provided for by Part IV and caused that legislation to come into force, and in relation to which Party such legislation remains in force, and in relation to a State or the Northern Territory or the Australian Capital Territory, a Party which has not terminated the reference of power provided for in a State Act or the request or other enabling provision as provided for in a Territory Act, as the case may be, but does not, in Parts V and VI, include the Commonwealth.

“State Acts” means the legislation provided for by clause 4.2 as amended from time to time consistently with this Agreement.

“Territory Acts” means the legislation provided for by clause 4.3 as amended from time to time consistently with this Agreement.

- 1.3 In this Agreement, 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, of the Governments of the Commonwealth, the States and the Australian Capital Territory and the Northern Territory, which may include Ministers of New Zealand.
- 1.4 In this Agreement, unless a contrary intention appears:
  - a) a reference to a Recital is a reference to a Recital of this Agreement;
  - b) a reference to a Part is a reference to a Part of this Agreement;
  - c) a reference to a clause, sub-clause or paragraph is a reference to a clause, sub-clause or paragraph of this Agreement;
  - d) words importing the singular shall include the plural and vice versa; and
  - e) words importing any gender shall include each of the other genders.

## **PART II**

### **COMMENCEMENT AND OPERATION OF AGREEMENT**

- 2.1 This Agreement shall come into force when it has been executed by the Parties hereto and shall operate for a period of 5 years from the date of commencement of the Commonwealth Act, subject to its continuation pursuant to clause 7.1 or termination pursuant to clause

## **PART III**

### **COMMENT ON DRAFT BILLS**

- 3.1 The Parties agree that the Draft Commonwealth Bill and the Draft State Bill will be available for public comment from the date of this Agreement up to and including 28 February, 1992. After that period the terms of the Draft Commonwealth Bill and the Draft State Bill may be varied with the unanimous consent to such by the Heads of Government of the Parties.

## **PART IV**

### **ESTABLISHMENT OF SCHEME AND LEGISLATION**

- 4.1 The Parties to this Agreement will, in accordance with this Agreement and, upon the coming into force of the legislation applicable to each Party referred to in clause 4.4, observe the mutual recognition principles set out in Recital D and in the Commonwealth Act.
- 4.2 The States will submit to their respective Parliaments legislation in, or substantially in, the terms of the Draft State Bill and use their best endeavours to secure the passage and bringing into force of that legislation on or before 30 June, 1992.
- 4.3 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 Bill contained in the Schedule to the Draft State Bill and will use their best endeavours to secure the passage and bringing into force of that legislation as applicable to each of them on or before 30 June, 1992.
- 4.4 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 clause 4.2 that has come into force;
  - b) to either the Northern Territory or the Australian Capital Territory (or both) the Parliament of which, as the case may be, has enacted the legislation referred to in clause 4.3 that has come into force; in, or substantially in, the terms of the Draft Commonwealth

Bill and will use its best endeavours to secure the passage and bringing into force of that legislation by 1 January, 1993.

- 4.5 The States will not submit to their respective Parliaments any legislation which will, upon coming into force, repeal or amend the legislation referred to in clause 4.2 except with the unanimous consent of the Participating Parties.
- 4.6 The Australian Capital Territory and the Northern Territory will not submit to their respective Parliaments any legislation which will, upon coming into force, repeal or amend the legislation referred to in clause 4.3 except with the unanimous consent of the Participating Parties.
- 4.7 The Commonwealth will not submit to the Commonwealth Parliament any legislation which will, upon coming into force, repeal or amend the Commonwealth Act except with unanimous consent of the Participating Parties.

## **PART V**

### **TEMPORARY EXEMPTIONS, DECLARATIONS AND ROLE OF MINISTERIAL COUNCILS**

#### *Goods*

- 5.1 If any goods or laws with respect to goods are temporarily exempted from the operation of the Commonwealth Act as envisaged by clause 15 of the Draft Commonwealth Bill, the matter of the standards (if any) which should be applicable to such goods shall be referred by the Participating Party in whose territory the exemption applies to the Ministerial Council having responsibility for such goods.
  - 5.2.1 The Council to which such matter is referred shall endeavour to determine, prior to the expiration of the exemption relating to the goods, whether a standard should be applicable with respect to such goods, and, if so, that standard.
  - 5.2.2 Any such determination may be made upon a vote in its favour by six or more of the members (excluding any member who does not represent a Participating Party) of the Ministerial Council.
    - 5.3.1 A Participating Party may refer the matter of the standards applicable to any goods in the territory of another Participating Party to the

Ministerial Council having responsibility for such goods for determination of whether a standard should be applicable to such goods and, if so, that standard. The Ministerial Council shall endeavour to determine, within 12 months of receiving such referral, whether or not a standard should be set with respect to the goods, and if so, that standard.

- 5.3.2 Any such determination may be made upon a vote in its favour by six or more of the members (excluding any member who does not represent a Participating Party) of the Ministerial Council.
- 5.4 The Parties acknowledge that in determining standards as referred to in clauses 5.2 and 5.3 a Ministerial Council or Ministerial Councils shall, wherever possible, align such standards with standards commonly accepted in international trade.
- 5.5 If more than one Ministerial Council has responsibility for any goods of the kind referred to in clause 5.1 and clause 5.3, any determination of whether a standard should be applicable with respect to such goods and, if so, that standard, shall be made upon a vote in its favour by six or more of the total members (excluding any member who does not represent a Participating Party) of all such Ministerial Councils jointly.

#### *Occupations*

- 5.6 If a declaration is made as envisaged by paragraph 2(b) of clause 31 of the Draft Commonwealth Bill the matter of the appropriate standards to entitle a person to carry on a particular activity or class of activity as a part of the practice of an occupation the subject of the declaration shall be referred by the Participating Party in whose territory the declaration applies to the Ministerial Council having responsibility for the occupation.
  - 5.7.1 The Council to which such matter is referred shall endeavour to determine, prior to the declaration ceasing to have effect, whether agreed standards, including national competency standards, should be applicable with respect to the particular activity or class of activity and, if so, those standards.
  - 5.7.2 Any such determination may be made upon a vote in its favour by six or more of the members (excluding any member who does not represent a Participating Party) of the Ministerial Council.

- 5.8.1 A Participating Party may refer the matter of the appropriate standards to entitle a person to carry on an occupation, or a particular activity or class of activity as part of the practice of an occupation, to the Ministerial Council having responsibility for such occupation for determination of whether agreed standards, including national competency standards, should be applicable with respect to the carrying on of the occupation, or the particular activity or class of activity, and, if so, those standards. The Ministerial Council shall endeavour to determine, within 12 months of receiving such referral, whether or not agreed standards, including national competency standards, should be set with respect to the carrying on of the occupation, or the particular activity or class of activity, and, if so, those standards.
- 5.8.2 Any such determination may be made upon a vote in its favour by six or more of the members (excluding any member who does not represent a Participating Party) of the Ministerial Council.
- 5.9 If more than one Ministerial Council has responsibility for any occupation, or particular activity or class of activity of the kind referred to in clauses 5.6 and 5.8.1, any determination of whether agreed standards, including national competency standards, should be applicable with respect to such occupation, or particular activity or class of activity, and, if so, those standards shall be made upon a vote in its favour by six or more of the total members (excluding any member who does not represent a Participating Party) of all such Ministerial Councils jointly.

#### *General*

- 5.10.1 Upon the making of a determination as provided for in this Part that:
- a) a standard should be applicable with respect to any goods and, if so, such standard; or
  - b) agreed standards, including national competency 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, and, if so, such standards; the Ministerial Council or Ministerial Councils jointly, as the case may be, shall recommend to the Heads of Government of the Participating Parties that the standard or standards, (as the case may be) as determined shall be adopted.

- 5.10.2 Unless such recommendation is disapproved by three or more of the Heads of Government of the Participating Parties within 3 months of its submission to those Heads of Government the Participating Parties will take such action, as soon as practicable, as is necessary to implement the recommendation.
- 5.10.3 Without limiting the generality of clause 5.10.2, where an agreed standard, including a national competency standard, is determined in accordance with this Part, the Participating Parties agree that a declaration will be made, as provided for by clause 31 of the Draft Commonwealth Bill, to the effect that the occupation or occupations to which such standard applies are equivalent.
- 5.11 Nothing in this Part is to be taken as preventing the Heads of Government of the Participating Parties from considering and determining any matter relating to the operation of this Agreement.
- 5.12 Recognising that the question of standards may often involve more than one portfolio, each Participating Party agrees that it will take all necessary action to ensure that a member representing it, pursuant to this Agreement, on the Ministerial Council or Councils, does so on behalf of that Participating Party.

## **PART VI**

### **PERMANENT EXEMPTIONS AND HEADS OF GOVERNMENT**

- 6.1.1 The Parties agree that no goods or laws with respect to goods shall be permanently exempted from the operation of the Commonwealth Act as envisaged by sub-clause 14(1) and sub-clause 14(2) respectively of the Draft Commonwealth Bill except with the unanimous consent of the Heads of Government of the Participating Parties.
- 6.1.2 In considering whether to give such unanimous consent, the Heads of Government may take into account such matters as they consider relevant, including any recommendation of a Ministerial Council.

## **PART VII**

### **REVIEW OF SCHEME**

- 7.1.1 In the 12 month period before the time fixed for the first or any subsequent expiry of this Agreement, the Heads of Government of the Participating Parties shall review the operation of this Agreement and the Commonwealth Act.

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- 7.1.2 Following such review, a Participating Party that is a State or the Northern Territory or the Australian Capital Territory may, in accordance with the State Acts or Territory Acts as the case may be, terminate the reference of power provided for in a State Act or the request or other enabling provision as provided for in a Territory Act, as the case may be.
- 7.1.3 Following such review, this Agreement shall continue to operate unless otherwise unanimously determined by the Heads of Government representing the remaining Participating Parties.
- 7.1.4 The Parties agree that the Heads of Government of the Participating Parties will monitor the effectiveness of the scheme implemented by this Agreement and make resolutions as to the future operation of the scheme and in doing so may request the Ministerial Councils having responsibility for goods and occupations the subject of the mutual recognition principles to report on the effectiveness of the scheme implemented by this Agreement and make recommendations as to the future operation of the scheme.
- 7.1.5 The Ministerial Councils as referred to in clause 7.1.4 shall, in addition to providing any report and making any recommendations as required by that clause, report on the effectiveness of the scheme implemented by this Agreement and make recommendations as to the future operation of the scheme to the Heads of Government of the Participating Parties no later than 6 months before the time fixed for the first or any subsequent expiry of this Agreement.
- 7.2 The Heads of Government of the Participating Parties may at any time before the first expiry of this Agreement review the operation of this Agreement and the Commonwealth Act and if they unanimously resolve to terminate this Agreement and that Act, do all that is practicable to terminate them.

## **PART VIII**

### **ACCESSION**

- 8.1 Any State or Territory, not being a Party to this Agreement, may elect so to become by notice in writing to the Participating Parties and shall thereafter be bound by the provisions of this Agreement.

- 8.2 Any Party to this Agreement, not being a Participating Party, may so become by the passage or making of legislation of the kind referred to in clause 4.2 or clause 4.3 as the case may be, or by the enactment of legislation adopting the Commonwealth Act.

## **PART IX**

### **RELATIONS WITH NEW ZEALAND**

- 9.1 The Parties to this Agreement agree to review in due course with New Zealand the potential benefits, consistent with the Australia-New Zealand Closer Economic Relations Trade Agreement, of participation by New Zealand in a scheme implementing mutual recognition principles, recognising that an appropriate intergovernmental agreement may be concluded to enable New Zealand so to participate.

*The Australian Mutual Recognition Scheme*

IN WITNESS WHEREOF this Agreement has been signed for and on behalf of the Parties as at the day and year first above written.

SIGNED by the Honourable ROBERT JAMES LEE HAWKE,  
*Prime Minister of the Commonwealth of Australia*

SIGNED by the Honourable NICHOLAS FRANK GREINER,  
*Premier of the State of New South Wales*

SIGNED by the Honourable JOAN ELIZABETH KIRNER,  
*Premier of the State of Victoria*

SIGNED by the Honourable WAYNE KEITH GOSS,  
*Premier of the State of Queensland*

SIGNED by the Honourable CARMEN MARY LAWRENCE,  
*Premier of the State of Western Australia*

SIGNED by the Honourable JOHN CHARLES BANNON,  
*Premier of the State of South Australia*

SIGNED by the Honourable MICHAEL WALTER FIELD,  
*Premier of the State of Tasmania*

SIGNED by ROSEMARY FOLLETT,  
*Chief Minister of the Australian Capital Territory*

SIGNED by the Honourable MARSHALL BRUCE PERRON,  
*Chief Minister of the Northern Territory*