

AGREEMENT BETWEEN

AUSTRALIA AND NEW ZEALAND

CONCERNING THE ESTABLISHMENT OF

THE GOVERNING BOARD, TECHNICAL ADVISORY

COUNCIL AND ACCREDITATION REVIEW BOARD

OF THE JOINT ACCREDITATION SYSTEM

OF AUSTRALIA AND NEW ZEALAND

AUSTRALIA AND NEW ZEALAND ("the Parties")

CONSCIOUS of their geographic proximity and their long standing political and economic relationship;

RECOGNISING the development of that relationship through the Australia New Zealand Closer Economic Relations - Trade Agreement done at Canberra on 28 March 1983 and enhanced by the Arrangement relating to Trans-Tasman Mutual Recognition signed by the Australian Prime Minister, Premiers and Chief Ministers on 14 June 1996 and by the New Zealand Prime Minister on 9 July 1996;

RECOGNISING the development of that relationship in the Agreement on Standards, Accreditation and Quality dated 26 October 1990 and made between Australia and the States and Territories of Australia and New Zealand;

RECOGNISING that their participation in a joint accreditation system will enhance trade between Australia and New Zealand and promote improved export opportunities and international trade for Australian and New Zealand producers of goods and services as well as improved national market opportunities;

ACKNOWLEDGING that the Joint Accreditation System of Australia and New Zealand may, from time to time, be asked to undertake a variety of additional activities for both Parties that each deem to be in their respective national interests;

RECOGNISING that the Agreement between Australia and New Zealand concerning the Establishment of the Council of the Joint Accreditation System of Australia and New Zealand (JAS-ANZ) dated 30 October 1991 created a joint mechanism which is now an international organisation under the respective legislation of both Parties, for accrediting conformity assessment bodies: and

ACKNOWLEDGING that the Agreement dated 30 October 1991 now needs to be amended in the light of experiences to date in the operation of the system:

HAVE AGREED as follows:

Article I Definitions

For the purposes of this Agreement, unless the context otherwise requires:

"*Accreditation*" means the procedure by which an authoritative body gives formal recognition that a body or person is competent to carry out specific tasks:

"*Accreditation Review Board*" means the Accreditation Review Board of the Joint Accreditation System of Australia and New Zealand established under Article 3 of this Agreement:

"*Assessment*" means all activities related to the accreditation of an organisation to determine whether the organisation meets all the requirements necessary for granting accreditation, and whether they are effectively implemented, including documentation review, accreditation audit, preparation and consideration of the accreditation audit report and other relevant activities necessary to provide sufficient information to allow a decision to be made as to whether accreditation shall be granted;

"*Australian Minister*" means the Australian Minister of State for Industry, Science and Tourism or such other Minister of State having for the time being the administration of the matters to which this Agreement relates;

"*Certification bodies*" means organisations that undertake or provide conformity assessment;

"*Conformity assessment*" means systematic examination to determine the extent to which a product, process, service or individual fulfils specified requirements;

"*Governing Board*" means the Governing Board of the Joint Accreditation System of Australia and New Zealand established under Article 3 of this Agreement;

"*New Zealand Minister*" means the New Zealand Minister of Commerce or such other Minister having for the time being the administration of the matters to which this Agreement relates; and

"*Technical Advisory Council*" means the Technical Advisory Council of the Joint Accreditation System of Australia and New Zealand established under Article 3 of this Agreement.

Article 2 Objective

The objective of the Parties is to strengthen the trading relationship between the Parties and between the Parties and other countries by:

- (a) maintaining a joint accreditation system that will give users in Australia and New Zealand confidence that goods and services certified by accredited bodies meet established standards:
- (b) obtaining and maintaining acceptance by the Parties' trading partners for:
 - (i) management systems of Australian and New Zealand producers: and
 - (ii) goods and services exported from Australia and New Zealand:
- (c) establishing links with relevant bodies whose function is to:

- (i) establish or recognise standards in relation to goods and services, including conformity assessment services; or
 - (ii) undertake or provide for conformity assessment; and
- (d) obtaining mutual recognition and acceptance of conformity assessment with relevant bodies in other countries.

Article 3 Governance

1. The Governments of Australia and New Zealand hereby establish the Governing Board, Technical Advisory Council and Accreditation Review Board of the Joint Accreditation System of Australia and New Zealand.
2. The Governing Board shall have rights and responsibilities for the operation of the Joint Accreditation System of Australia and New Zealand.

Article 4 Functions of the Governing Board

The Governing Board shall perform the following functions under this Agreement:

- (a) develop and maintain mechanisms for accrediting bodies offering conformity assessment programs, including management systems certification, product certification, personnel certification and inspection in Australia and New Zealand;
- (b) develop and maintain international recognition and acceptance of conformity assessment in Australia and New Zealand by establishing links with appropriate organisations provided that:
 - (i) any agreements into which it enters do not, either directly or by implication, impose any obligations on either the Government of Australia or the Government of New Zealand;
 - (ii) it will advise the Australian Minister and the New Zealand Minister of the nature of any intended negotiations and will seek advice on the appropriate processes to adopt in such negotiations: and
 - (iii) it will keep the Australian Minister and the New Zealand Minister advised of the progress of such negotiations and will not sign or commit to sign any such agreement without appropriate clearance from the Australian Minister and the New Zealand Minister:
- (c) appoint a Chief Executive to manage the affairs of the Joint Accreditation System of Australia and New Zealand under the direction of the Governing Board:

- (d) employ personnel to assist the Governing Board in the performance of its functions and responsibilities and, in the appointment of personnel, the Governing Board shall have due regard to the joint nature of this Agreement;
- (e) appoint members of the Technical Advisory Council and Accreditation Review Board in accordance with Articles 11 and 12 of this Agreement and establish other committees and devolve to them such functions and responsibilities as the Governing Board sees fit;
- (f) provide advice on conformity assessment to the Australian Minister and the New Zealand Minister,
- (g) within three months after the end of each financial year prepare and furnish to the Australian Minister and the New Zealand Minister a report which shall address, inter alia, the following matters:
 - (i) progress in the establishment and expansion of accreditation systems;
 - (ii) progress in establishing mutual recognition agreements with other relevant bodies;
 - (iii) performance in relation to projects of "national interest" as determined by the Australian Minister and/or the New Zealand Minister, and
 - (iv) activities of the Pacific Accreditation Cooperation;
- (h) consider and endorse the rules of procedure developed by the Technical Advisory Council for the operation of the joint accreditation system:
- (i) such other functions as will enable the Governing Board to achieve the objectives set out in Article 2 of this Agreement; and
- (j) such other functions as may be jointly determined by the Australian Minister and the New Zealand Minister.

Article 5
Powers of the Governing Board

The Governing Board shall have such powers as are necessary for the performance of, and incidental to, its functions under this Agreement.

Article 6
Structure of the Governing Board

1. . The Governing Board shall consist of ten members including a representative of the Government of each Party, of whom six shall be appointed by the Australian Minister and three shall be appointed by the New Zealand Minister. The Chief Executive of the organisation shall also be a member of the Governing Board.
2. No member shall be appointed from certification body interests.
3. A member shall be appointed for an initial period not exceeding three years with provision for further periods of appointment.
4. The Governing Board shall invite the Chairperson of the Technical Advisory Council to participate in its meetings as an observer and shall also give due consideration to any advice provided by the Technical Advisory Council in relation to the operation of the joint accreditation system.
5. Notwithstanding paragraph 3 of this Article, a member shall continue in office until such time as another appointment is made.
6. A Chairperson and Vice Chairperson shall be appointed from among the appointed members of the Governing Board by a joint decision of the Australian Minister and the New Zealand Minister. The Chairperson and Vice Chairperson shall be appointed alternately from Australia and New Zealand. The Chairperson and Vice Chairperson shall be from different countries. The first Chairperson shall be from New Zealand.
7. The Chairperson and Vice Chairperson shall each be appointed for an initial period not exceeding three years with provision for further periods of appointment.
8. All appointed members including the Chairperson and Vice Chairperson shall serve on a part-time basis and in an honorary capacity save that the Governing Board may, from time to time and under such terms and conditions as it shall decide, reimburse out of pocket expenses incurred by the members in the performance of their duties under this Agreement.
9. No member of the Governing Board shall be personally liable for any act done or default made by the Governing Board in good faith in the course of the operations of the Governing Board.
10. Without limiting the provision of paragraph 9 of this article, in any proceedings against any member of the Governing Board in respect of any act or default alleged to be not in good faith. the member shall not be personally liable if the member shows:

- (a) where the act or default was pursuant to a resolution passed at a meeting of the Governing Board, that the member was not present when the resolution was passed, or that the member voted against it: or
- (b) where the act or default was not pursuant to such a resolution, that it occurred without the member's knowledge, or, if within the member's knowledge, that it occurred against the member's protest made at or before the time it occurred.

11. An appointed member may resign office by giving written notice to the Minister who appointed that member.

12. The appointment of a member may be terminated by the Minister who appointed the member by giving written notice of termination to the member.

13. The Australian Minister or the New Zealand Minister may appoint a person to act as a member during any vacancy in office or during any period or during all periods when a member appointed by the relevant Minister is for any reason unable to perform the duties of any office to which the member is appointed and may terminate any such acting appointment upon giving written notice to the acting member.

14. The Australian Minister and the New Zealand Minister may jointly appoint a member to act as Chairperson or Vice Chairperson during any vacancy in office or during any period or during all periods when the Chairperson or Vice Chairperson are for any reason unable to perform the duties of that office and may terminate any such acting appointment upon giving written notice to the acting Chairperson or Vice Chairperson.

Article 7 Accountability

1. The Governing Board shall deliver to the Australian Minister and the New Zealand Minister a statement of corporate intent not later than one month before the commencement of each financial year.

2. Each statement of corporate intent shall specify in respect of that financial year and each of the immediately following two financial years. the following information:

- (a) the objectives of the Joint Accreditation System of Australia and New Zealand;
- (b) the nature and scope of the activities to be undertaken:
- (c) the performance targets and other measures by which the performance of the Joint Accreditation System of Australia and New Zealand may be judged in relation to its objectives:

(d) the kind of information to be provided to the Australian Minister and the New Zealand Minister by the Joint Accreditation System of Australia and New Zealand during the course of those financial years;

(e) any activities for which the Governing Board seeks compensation from the Australian Minister and the New Zealand Minister (whether or not the Australian Minister or the New Zealand Minister have agreed to provide such compensation); and

(f) such other matters as are agreed by the Australian Minister and the New Zealand Minister and the Governing Board.

3. The Governing Board shall adopt accounting policies in accordance with Australian Accounting Standards.

4. A statement of corporate intent may be modified at any time by written notice from the Governing Board to the Australian Minister and the New Zealand Minister.

5. Within three months after the end of each financial year the Governing Board shall deliver to the Australian Minister and the New Zealand Minister:

(a) a report of the operations of the Joint Accreditation System of Australia and New Zealand during that financial year;

(b) audited consolidated financial statements for that financial year and such other statements as may be necessary to show the financial position of the Joint Accreditation System of Australia and New Zealand and the financial results of its operations during the financial year: and

(c) the auditor's report on those financial statements.

6. Every report under paragraph 5(a) of this Article shall contain such information as is necessary to enable an informed assessment of the operations of the Joint Accreditation System of Australia and New Zealand, including a comparison of the performance of the Joint Accreditation System of Australia and New Zealand with the relevant statement of corporate intent.

Article 8 Procedures

1. Meetings of the Governing Board shall be held at least once a year at such places as the Governing Board shall determine. Meetings of the Governing Board may take place by way of teleconferencing or videoconferencing.

2. At any meeting where neither the Chairperson, Vice Chairperson, acting Chairperson nor the acting Vice Chairperson is present the Governing Board may elect a member who is present to be Chairperson for that meeting.

3. Rules for the conduct of meetings of the Governing Board including rules for establishing committees and the devolution of functions and responsibilities to such committees, the appointment of members of such committees and rules for the conduct of their meetings shall be determined by the Governing Board.
4. A quorum for meetings of the Governing Board shall be four members appointed by the Ministers, of whom at least one member shall have been appointed by the New Zealand Minister.
5. Decisions of the Governing Board shall be made, wherever possible, by consensus. However, where consensus cannot be reached, decisions may be made by majority. Such a majority must include at least one member of the Governing Board appointed by the New Zealand Minister.

Article 9 Fees

The Governing Board shall establish a system of charging fees for the commercial services which it provides in fulfilment of its functions on the principle that it will be self-funding and not for profit.

Article 10 Intellectual property

The title to, and any rights subsisting in, any intellectual property created pursuant to this Agreement by:

- (a) the Governing Board;
- (b) a member of the Governing Board;
- (c) any person appointed by the Governing Board; or
- (d) any person or group of persons acting for, or on behalf of, the Governing Board, shall be owned by, or vested jointly in, the Governing Board.

Article 11 Technical Advisory Council

1. The Governing Board shall appoint a Technical Advisory Council of no more than 25 members. The Governing Board shall appoint, from among the non-certification body members appointed to the Technical Advisory Council, a Chairperson and Vice Chairperson of the Technical Advisory Council.
2. The members of the Technical Advisory Council shall be appointed with a view to ensuring appropriate representation of all parties significantly concerned in the development of policies and principles regarding the content and functioning of the joint accreditation system, including representatives of conformity assessment bodies subject to accreditation and regulatory agencies utilising accredited conformity assessment.

3. The members shall be appointed so that at least one third of the membership shall be drawn from individuals normally resident in New Zealand.
4. No single technical interest shall predominate in the membership of the Technical Advisory Council or in the membership drawn from either Australia or New Zealand.
5. All appointed members, including the Chairperson and Vice Chairperson, shall serve on a part-time basis in an honorary capacity, save that the Governing Board may, from time to time and under such terms and conditions as it shall decide, reimburse out of pocket expenses incurred by the members of the Technical Advisory Council in the performance of their duties under this Agreement.
6. An appointed member may resign office by giving written notice to the Chairperson of the Governing Board.
7. The appointment of a member may be terminated by the Chairperson of the Governing Board by giving written notice of termination to the member.
8. The Technical Advisory Council shall provide advice to the Governing Board on matters relating to the joint accreditation system, including policy matters relating to the operation of the Accreditation Review Board, the implementation of those policies and the performance of the accreditation functions of the Accreditation Review Board.
9. The Technical Advisory Council shall also develop and recommend to the Governing Board rules or procedure for the Accreditation Review Board to enable it to deal with applications for accreditation, assessments in relation to such applications and also for the granting, maintaining, extending, reducing, suspending and withdrawing of accreditation.
10. Meetings of the Technical Advisory Council shall be held at least once a year at such places as agreed by the Governing Board. Meetings of the Technical Advisory Council may take place by way of teleconferencing or videoconferencing.
11. Rules for the conduct of meetings of the Technical Advisory Council shall be determined by the Governing Board.

Article 12 Accreditation Review Board

1. The Governing Board shall appoint an Accreditation Review Board with appropriate technical experience and expertise drawn from a cross section of industries and technologies.
2. The Accreditation Review Board shall be responsible for considering and making decisions in relation to applications for accreditation from certification bodies and decisions in relation to the granting, maintaining, extending, reducing, suspending and withdrawing of accreditation.

3. All appointed members shall serve on a part-time basis in an honorary capacity, save that the Governing Board may, from time to time and under such terms and conditions as it shall decide, reimburse out of pocket expenses incurred by the members of the Accreditation Review Board in the performance of their duties under this Agreement.

4. An appointed member may resign office by giving written notice to the Chairperson of the Governing Board.

5. The appointment of a member may be terminated by the Chairperson of the Governing Board by giving written notice of termination to the member.

6. The Accreditation Review Board shall report on a regular basis to the Governing Board.

Article 13 Implementation

The Australian Department of Industry, Science and Tourism and the New Zealand Ministry of Commerce shall be responsible for implementing this Agreement.

Article 14 Consultation

Each Party shall consult with the other and decide jointly upon any issues affecting or likely to affect the interests of the other in the application, interpretation or implementation of this Agreement.

Article 15 Amendment

This Agreement may be amended by written agreement of the Parties.

Article 16 Termination

This Agreement may be terminated by either Party upon 180 days written notice to the other Party.

Article 17 Termination of previous Agreement

Notwithstanding Article 14 of the Agreement between Australia and New Zealand concerning the Establishment of the Council of the Joint Accreditation System of

Australia and New Zealand (JAS-ANZ) done at Canberra, 30 October 1991, that Agreement shall terminate on entry into force of this Agreement.

Article 18
Entry into force

This Agreement shall enter into force on the date on which the Parties have exchanged notes confirming the completion of their respective procedures for the entry into force of this Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Canberra on the twenty-fifth day of March 1998.

FOR AUSTRALIA:

FOR NEW ZEALAND: