

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF AUSTRALIA AND
THE GOVERNMENT OF NEW ZEALAND ON HARMONISATION OF BUSINESS LAW

This Memorandum records the following understandings reached in discussions between the Government of Australia and the Government of New Zealand regarding promotion of closer economic relations between Australia and New Zealand : -

Mutual benefits to be obtained by the two countries

Both Governments recognise the importance of accelerating, deepening and widening the relationship that has developed through the growth of trans-Tasman trade since the commencement of the Australia New Zealand Closer Economic Relations - Trade Agreement which came into force in 1983.

2. Both Governments also recognise that differences in the laws and regulatory practices relating to business may impede the enhancement of this relationship by inhibiting the creation of an environment conducive to the growth of trade in goods and services and the efficiency of both economies.

3. The further harmonisation of significant areas of business law and regulation can be of mutual benefit to both countries. Such harmonisation can advance the development of free trade and commerce between the two countries and facilitate the development of the efficiency and competitiveness of both countries in relation to international markets.

4. Starting from their similar legal and commercial backgrounds, Australia and New Zealand have already achieved a significant degree of harmonisation and co-operation in a number of areas of business law, including:

- (a) restrictive trade practices laws administered by the Trade Practices Commission in Australia and the Commerce Commission in New Zealand;
- (b) co-operation in relation to business law and consumer affairs through the Standing Committee of Attorneys-General and the Standing Committee of Consumer Affairs Ministers;
- (c) pre-sale consumer protection;
- (d) co-operation between the National Companies, and Securities Commission in Australia and the Securities Commission in New Zealand on the admission of share prospectuses;
- (e) intellectual property law.

Further development of business law harmonisation

5. It is desirable that the process of harmonisation and co-operation be continued with a view to achieving a mutually beneficial trans-Tasman commercial environment, including the removal of any impediments to trade that may arise out of differences between the business laws and regulatory practices of the two countries. To this end both Governments will examine the scope for harmonisation of business laws and regulatory practices, including the removal of any impediments that are identified, in accordance with a program to be established. This program will include the following areas:

- (a) companies, securities and futures laws, including:
 - (i) cross-recognition of essential elements of corporate status, including registration ('one place of registration'), and capacity and powers of corporations;
 - (ii) share capital requirements, including in relation to share buy-backs and no-par value shares;
 - (iii) fund raising, including recognition of prospectuses, regulation of unit trusts and other investment schemes;
 - (iv) registration of charges;

- (y) disclosure of company operations, accounts and shareholding interests;
 - (vi) corporate governance;
 - (vii) takeover law;
 - (viii) insolvency;
 - (ix) securities industry regulation, including stock market rules, insider trading, transfer and settlement systems and licensing requirements;
 - (x) futures industry regulation;
- (b) competition law, including in particular reliance on competition law to redress predatory trade between both countries;
- (c) consumer protection, particularly with respect to post-sale consumer protection, and consumer credit laws;
- (d) copyright law, including support of appropriate international conventions, and the protection of computer software and integrated circuits;
- (e) commercial arbitration;
- (f) the law relating to the sale of goods and services between the two countries;
- (g) mutual assistance between regulatory agencies in the administration and enforcement of business laws;
- (h) further recognition and reciprocal enforcement of court decisions in each country, including enforcement of injunctions, orders for specific performance and revenue judgments.

6. The two Governments will keep the program under review and make such variations to the program as are mutually decided.

7. When either Government considers that a difference between their respective business laws or regulatory practices gives rise to an impediment to trade, and requests consultations, the two Governments will consult with a view to resolving the impediment, whether the area of law is already included on the program and regardless of the priority accorded to the matter at the time.

8. Both Governments recognise that effective harmonisation does not require replication of laws, although that may be appropriate in some cases.

9. Each Government will keep the other Government informed of proposed reforms in the business law area and, where feasible and appropriate, will consult on the harmonisation of the laws in question.

10. Each Government will take the necessary steps to facilitate prompt examination of the areas of business law and regulatory practices contained in the program to be established. The examination process is to include consultation with the business community and other relevant interests in both countries.

Outcome

11. Both Governments will seek to complete the examination of relevant law and practices, and to identify areas appropriate for harmonisation, by 30 June 1990.

12. The understandings set out in this Memorandum are not intended to preclude the taking of any other steps, through Ministerial forums and otherwise, to achieve the earlier harmonisation of any area of business law or regulatory practice.

Commencement and implementation

13. The Attorney-General of Australia and the Minister of Justice of New Zealand will have responsibility on behalf of their respective Governments for the implementation of this Memorandum of Understanding including the establishment, and any variation of, the program.

14. This Memorandum of Understanding will come into effect on the date of its signature.

Signed at Darwin on the 1st day of July 1988.

For the Government of Australia

[signed by Lionel Bowen]

For the Government of New Zealand

[signed by Geoffrey Palmer]