

20 November 2017

Trans-Tasman IP Attorneys Board

By email

MDB-TTIPABCodeOfConduct@ipaaustralia.gov.au

Response to review of the draft Code of Conduct 2018 - Submission from FB Rice
Our Ref: 28M-3

Dear Madam/Sir

We refer to the latest round of review of the draft Code of Conduct 2018 and the invitation to make submissions by 20 November 2017. We are pleased to make the following submissions on behalf of FB Rice.

We are pleased overall with the changes to the draft Code. However, the introduction of the requirements of Clause 16 around Communication and the draft language in this clause have consequences that we believe must be addressed before the new Code is finalised.

a) Transitional Provision

The new separate requirements placed upon a registered attorney that is an incorporated attorney in clause 16(d) and a member of an ownership group in clause 16(e) appropriately apply “prior to undertaking work for a new or prospective client”.

However, with the introduction of this new requirement when the new Code comes into force, these new requirements will only apply prior to attorneys undertaking work for a new or prospective client after the introduction of the new Code. That is, there appears to be no requirement in the Code to tell current clients that a registered attorney is incorporated, or is public or private, or is a member of an ownership group, or the identity of the members of that group. Where this has not been done to date, the result will be following introduction of the new Code that while new clients will be so informed the vast majority of current clients of Trans-Tasman registered attorneys may not be aware of these issues when dealing with their registered attorney. Indeed, the very reason for the introduction of clause 16 strongly suggests the Board received sufficient evidence that such disclosure was not being voluntarily made.

Our recommendation is that a transitional provision be introduced in the Code that obliges registered attorneys that have undergone a change in structure since being allowed to do so under the provisions of the "Raising the Bar" Act 2013 (i.e. that have incorporated and/or become part of an ownership group since April 2013) are required to inform all current clients (or foreign-registered attorneys) of the matters outlined under clause 16 (1)(d) and 16(1)(e), if they have not previously done so. A defined period of say 3 months could be imposed from the date of introduction of the new Code to meet this requirement. Such a transitional provision will ensure all clients (whether new or existing) are equally informed about the structure and ownership of their registered attorney.

b) Changes in identity and/or number of members of a Group

There also appears to be no requirement in Clause 16 of the draft Code to communicate to current clients (or foreign-registered attorneys) when a registered attorney ownership group undergoes a change in the number and/or identity of members of that ownership group. It would seem only fair that the current clients of registered attorney in an ownership group be as equally informed as new clients about such a change. The Code should require a registered attorney in an ownership group to clearly inform current clients in writing when a new member is added to the ownership group and also the identity of that new member. Current clients should also be informed when there is a change in name of any member of an ownership group. A defined period of say 3 months could be imposed as a reasonable period in which all of the current clients of a registered attorney in an ownership group are informed of any such changes.

We submit that the above changes are essential to ensuring all clients of registered attorneys in Australian and New Zealand are equally informed about the structure and ownership of their registered attorney. We thank the Board for consideration of the above issues and look forward with interest to release of the Code.

Yours faithfully
FB Rice



Dr Brett Lunn