



## **Code of Conduct for Trans-Tasman Patent and Trade Marks Attorneys 2018**

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The Trans-Tasman IP Attorneys Board makes the following Code of Conduct under the *Patents Act 1990* and the *Trade Marks Act 1995*.

Dated: ...

The Trans-Tasman IP Attorneys Board

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## Part 1—Preliminary

### 1 Name of code

This code is the Code of Conduct for Trans-Tasman Patent and Trade Marks Attorneys 2018.

### 2 Commencement

This code commences on the day that is 1 month after the day this code is registered.

### 3 Authority

This code is made under the *Patents Act 1990* (Cth) and the *Trade Marks Act 1995* (Cth), and in accordance with the *Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys* signed in March 2013.

### 4 Definitions

In this code:

***ancillary business*** means a business providing services in relation to intellectual property that are ancillary to the attorney professional services provided by a registered patent attorney or a registered trade marks attorney and that are directed to, or likely to be utilised by, a client or a prospective client of a registered attorney.

***associated person*** means a person (including another registered attorney), other than a staff attorney or a foreign-registered attorney, who does work for a registered attorney under a contract or other arrangement, including a person who acts as the agent or representative of the registered attorney for the purposes of the Patents Act or the Trade Marks Act.

***Board*** means the Trans-Tasman IP Attorneys Board.

***director*** means a patent attorney director or trade marks attorney director.

***foreign-registered attorney*** means an individual or a body corporate (however described) that is authorised, under a law of a country or region other than Australia or New Zealand, to do some or all of the following work:

- (a) applying for patents, trade marks, designs or protection for plant varieties;
- (b) obtaining patents, trade marks, designs or protection for plant varieties;
- (c) preparing applications or other documents for the purposes of the laws of that country or region relating to patents, trade marks, designs or protection for plant varieties;

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- (d) giving advice about the validity of patents, trade marks, designs or protection for plant varieties;
- (e) giving advice about the possible infringement of patents, trade marks, designs or protection for plant varieties.

**guidelines** means the guidelines for understanding and interpretation of this code as published by the Board from time to time.

**incorporated attorney** means an incorporated patent attorney or an incorporated trade marks attorney.

**incorporated patent attorney** has the same meaning as in the Patents Act.

**incorporated trade marks attorney** has the same meaning as in the Trade Marks Act.

**incorporation group** means two or more incorporated attorneys, and any incorporated ancillary business, that constitute “associated entities” as that term is defined in the *Corporations Act 2001*.

**ownership group** means an incorporation group or a partnership group.

**partnership group** means two or more partnerships of registered attorneys in respect of which there is at least one registered attorney that is a partner in all partnerships, together with any ancillary business in which a material investment, and over which significant influence, is held by at least one partner in any of the partnerships.

**patent attorney director** has the same meaning as in the Patents Act.

**Patents Act** means the *Patents Act 1990* (Cth).

**professions** means:

- (a) the patent attorney profession; and
- (b) the trade marks attorney profession.

**registered attorney** means a person to whom this code applies.

**registered patent attorney** has the same meaning as in the Patents Act.

**registered trade marks attorney** has the same meaning as in the Trade Marks Act.

**regulatory authority** means a body:

- (a) established by or under a law; or
  - (b) otherwise established by a government;
- with which a registered attorney may deal with while doing work as a registered attorney.

**staff attorney** means:

- (a) an individual who is a registered patent attorney and employed by an incorporated patent attorney; or

- (b) an individual who is a registered trade marks attorney and employed by an incorporated trade marks attorney.

*Trade Marks Act* means the *Trade Marks Act 1995* (Cth).

*trade marks attorney director* has the same meaning as in the Trade Marks Act.

## **5 Former Code of Conduct**

This code replaces the Code of Conduct that was published by Professional Standards Board for Patent and Trade Marks Attorneys dated 18 September 2013.

## **Part 2—Overview**

### **6 Application of code**

This code applies to:

- (a) a registered patent attorney; and
- (b) a registered trade marks attorney.

### **7 Objective of code**

The objective of this code is to set out the standards of practice to which a registered attorney is required to adhere.

### **8 Guidelines to code**

From time to time the Board may publish guidelines to assist registered attorneys and their clients to understand this code and the conduct it covers. Any such guidelines are informative, illustrative, are not exhaustive and do not form part of this code.

### **9 Rights of clients not affected**

This code does not affect or reduce the rights of a client of a registered attorney in relation to the registered attorney's conduct.

### **10 Administration**

- (1) The Board is responsible for:
  - (a) publicising this code to ensure widespread awareness of its purpose and provisions; and
  - (b) implementing measures to ensure that registered attorneys are aware of this code's purpose and provisions; and
  - (c) conducting periodic reviews of this code's effectiveness, and of the procedures in this code, with a view to possible changes; and
  - (d) preparing annual and other reports relating to this code.
- (2) This code is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is available on the Federal Register of Legislation website (<https://www.legislation.gov.au/>).
- (3) The Board's contact details are available on the Board's website (<https://www.ttipattorney.gov.au/>).



## **Part 3—Professional conduct**

### **11 Core obligations**

- (1) A registered attorney must act as a patent attorney or a trade marks attorney:
  - (a) in accordance with the law; and
  - (b) in the best interests of the registered attorney's clients; and
  - (c) in the public interest; and
  - (d) in the interests of the registered attorney's profession as a whole.
- (2) If a registered attorney is unable to comply equally with all of the obligations mentioned in subsection (1), the registered attorney must treat the obligations as an order of priority in which paragraph (1)(a) is the highest priority.

### **12 Responsibility**

- (1) A registered attorney, whether an individual, a director or an incorporated attorney, is responsible for:
  - (a) the registered attorney's own work, acts and defaults as a patent attorney or a trade marks attorney; and
  - (b) the work, acts and defaults of each associated person.
- (2) A registered attorney who is a director is responsible for:
  - (a) the director's own work, acts and defaults as a director; and
  - (b) each staff attorney's work, acts and defaults as a patent attorney or a trade marks attorney.
- (3) A registered attorney that is an incorporated attorney is responsible for:
  - (a) the incorporated attorney's own work, acts and defaults as an incorporated attorney; and
  - (b) each director's work, acts and defaults as a director; and
  - (c) each staff attorney's work, acts and defaults as a patent attorney or a trade marks attorney.

### **13 Integrity**

- (1) A registered attorney must not act as a patent attorney or a trade marks attorney in a way that is fraudulent, deceitful or knowingly misleading.
- (2) A registered attorney must maintain standards of professional practice as a patent attorney or a trade marks attorney that are courteous, ethical and well-informed.

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## **14 Competency**

- (1) A registered attorney must have appropriate competency for the work that the registered attorney undertakes.
- (2) A registered attorney must carry out the work that the registered attorney undertakes with due skill and care.

## **15 Diligence**

- (1) A registered attorney must carry out the work that the registered attorney undertakes in a timely manner.
- (2) A registered attorney must:
  - (a) act promptly on the instructions of a client or a prospective client; or
  - (b) inform the client or prospective client promptly of the registered attorney's inability to do so.

## **16 Communication**

- (1) Prior to undertaking work for a new or prospective client, a registered attorney must ensure that the client is clearly informed in writing of the following matters:
  - (a) that the registered attorney is registered as a patent attorney, a trade marks attorney or both, and is bound by this code; and
  - (b) the type of work for which the registered attorney has competency; and
  - (c) the procedures, timing and estimated cost of doing particular work; and
  - (d) the legal personality of the registered attorney and the legal structure under which the registered attorney practices; and
  - (e) where the registered attorney is an incorporated company – whether the company is public or private; and
  - (f) where the registered attorney is the member of an ownership group – that fact and the identity of the other members of that group.
- (2) A registered attorney is not required to comply with any of paragraphs (1)(a), (1)(b) and (1)(c) if:
  - (a) the client is also represented by a foreign-registered attorney and the registered attorney is dealing with the client by dealing with the foreign-registered attorney; or
  - (b) the registered attorney has been requested to do work for the client by another registered attorney and the other registered attorney continues to act for the client in the work.
- (3) Where any of the matters specified in subsection (1) become materially different from those previously notified to the client, the registered attorney must clearly inform the client in writing of the changes.

## 17 Disclosure

Unless prohibited by section 18 or otherwise by law, a registered attorney that is an individual must disclose to a client all information of which the registered attorney is aware that is relevant to work being undertaken for the client.

## 18 Confidentiality

Unless permitted or required by law, a registered attorney must not use or disclose confidential information obtained from or on behalf of a former, current or prospective client without the consent of the client.

## 19 Loyalty

### *Current client*

- (1) A registered attorney is a fiduciary in respect of the registered attorney's dealings with a current client, and owes a duty of loyalty to a current client.
- (2) A registered attorney must not prefer the registered attorney's own interests over the interests of a current client.
- (3) A registered attorney must not prefer the interests of one current client over the interests of another current client.
- (4) Subject to subsection (5), a registered attorney must not act for a client in a matter knowing that the client's interests are adverse to the interests of another current client of the registered attorney unless:
  - (a) both clients in writing have given reasonably informed consent to the registered attorney acting in the matter; and
  - (b) where the registered attorney holds confidential information relevant to the matter obtained from or on behalf of either client – the registered attorney has established an effective information barrier in relation to the relevant confidential information.
- (5) A registered attorney must not act for two or more clients in the same matter relating to proceedings before a court, a tribunal or a like adjudicative body where the registered attorney knows the clients' interests are or are likely to be adverse.

### *Former client*

- (6) A registered attorney must not act for a client in a matter knowing that the client's interests are adverse to the interests of a former client unless:
  - (a) the registered attorney does not hold confidential information relevant to the matter obtained from or on behalf of the former client; or
  - (b) where the registered attorney does hold confidential information relevant to the matter obtained from or on behalf of the former client – the registered attorney has established an effective information barrier in relation to the

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relevant confidential information.

## **20 Conflicts**

- (1) A registered attorney must avoid creation of a situation giving rise to an actual conflict or the reasonable possibility of a conflict:
  - (a) between the registered attorney's interests and the interests of a current client; and
  - (b) between the interests of one current client over the interests of another current client.
- (2) Upon becoming aware of a situation giving rise to an actual conflict or the reasonable possibility of a conflict of the types described in subsection (1), a registered attorney must take steps, as soon as practicable, to resolve the actual conflict or the reasonable possibility of a conflict.

## **21 Independence**

- (1) For the purposes of sections 19 and 20, a registered attorney that is a member of an ownership group will not be regarded as independent of the other members of the group unless the registered attorney operates independently of the other members in the provision to clients of attorney professional services.
- (2) Notwithstanding subsection (1), a registered attorney that is a member of an ownership group must not act for a client in a matter relating to proceedings before a court, a tribunal or a like adjudicative body where the registered attorney knows that a client of another member of the group is involved in the matter and that the clients' interests are adverse unless the registered attorney's client in writing has given reasonably informed consent to the registered attorney acting in the matter.

## **22 Termination of services**

If a registered attorney withdraws the registered attorney's services, or ceases to act for a client, the registered attorney must take reasonable steps:

- (a) to inform the client of any actions necessary to maintain the client's intellectual property rights; and
- (b) to cooperate with the client and any new representative of the client to ensure the client's intellectual property rights are maintained during transfer of responsibility.

## Part 4—Practice management

### 23 Ownership

- (1) A registered attorney may be a member of an ownership group.
- (2) Where a registered attorney is a member of an ownership group, that fact and the identify of all other members of the ownership group must be clearly disclosed on all client and public communications to the fullest extent reasonably feasible.

### 24 Funds

- (1) A registered attorney must ensure that a cost, official fee or debt is paid in a timely manner after the registered attorney's client has given the relevant amount to the registered attorney.
- (2) A registered attorney must ensure that the funds of a client are kept and accounted for using an accounting standard that is appropriate to the circumstances of the registered attorney's practice.
- (3) A registered attorney must use money paid by a client only:
  - (a) for the purposes for which the client paid the money; or
  - (b) in accordance with any instructions given by the client before, during or after the payment of the money.
- (4) A registered attorney must, as soon as practicable, give a client any refund due to the client.

### 25 Client property

- (1) If a client asks a registered attorney to return or make available to the client a document, sample or other material:
  - (a) that is the client's property; or
  - (b) to which the client may have access under an agreement between the registered attorney and the client; or
  - (c) in which the client has a legal or other interest that entitles the client to have access to the document, sample or material;the registered attorney must ensure that the document, sample or other material is returned or made available to the client.
- (2) However, a registered attorney is not required to comply with subsection (1) if the client has not satisfied a lien imposed in accordance with the *Patents Regulations 1991* (Cth) or the *Trade Marks Regulations 1995* (Cth) or otherwise by law.

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**26 Address**

- (1) A registered attorney must:
  - (a) have a current address at which notices can be served for the purposes of this code; and
  - (b) ensure that the Board is notified of the current address; and
  - (c) notify the Board of a change of address within 14 days.
- (2) The Board will act on the assumption that a notice served on a registered attorney at an address notified to the Board under paragraph (1)(b) has been received by the registered attorney.

## **Part 5—Complaints and disciplinary proceedings**

### **27 Complaints**

- (1) A person or body may make a complaint to the Board, or provide information to the Board, about the conduct of a registered attorney.
- (2) A registered attorney must not:
  - (a) make a complaint to the Board, or provide information to the Board, under subsection (1) for an improper purpose; or
  - (b) threaten to make a complaint to the Board, or provide information to the Board, for an improper purpose.

### **28 Disciplinary proceedings**

- (1) The Board has the sole responsibility for commencing and conducting disciplinary proceedings against a registered attorney.
- (2) The Board can take on this role as a result of information it receives or on its own initiative.
- (3) The Board may commence proceedings before the Trans-Tasman IP Attorneys Disciplinary Tribunal against a registered attorney who is an individual if the Board is satisfied that there is a reasonable likelihood of that registered attorney being found guilty of unsatisfactory professional conduct. The Board is required to commence proceedings if the Board is satisfied that there is a reasonable likelihood of that registered attorney being found guilty of professional misconduct.
- (4) The Board may apply to the Trans-Tasman IP Attorneys Attorneys Disciplinary Tribunal to cancel or suspend the registration of an incorporated patent attorney or an incorporated trade marks attorney.
- (5) The Board may issue disciplinary guidelines relating to registered patent attorneys and registered trade marks attorneys.