

# Code of Conduct for Patent and Trade Marks Attorneys

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## 1. BACKGROUND

- 1.1 The Code of Conduct will apply to all registered patent and trade marks attorneys (attorneys) including those employed in companies undertaking the business of the company.
- 1.2 This Code of Conduct has been developed by the Professional Standards Board for Patent and Trade Marks Attorneys on the basis of widespread stakeholder consultation with the cooperation of the profession and the Australian Competition and Consumer Commission (ACCC). It was established at the instigation of the Government in its response to the Review of the Regulatory Regime for Patent Attorneys undertaken in 1996.
- 1.3 In this Code a reference to the professions is a reference to the Patent and Trade Marks Attorney professions

## 2. OBJECTIVES OF THE CODE

- 2.1 To provide a framework for fair and equitable dealing between attorneys and their clients.

- 2.2 To provide a standard of acceptable conduct that can be used in the settling of disputes.

- 2.3 To assist complainants to understand the obligations of attorneys to their clients and to provide information on the grounds for complaints and the method for filing a complaint.

## 3. THE ESSENCE OF THE CODE

- 3.1 The essence of the Code is an honourable professional relationship between attorneys and their clients. This must come from a culture which is developed by all members of the professions and into which new members of the professions are inducted and to which they adhere. The principles of the Code are set out in what follows in order to provide an understanding of the culture, and to clarify some of the particular features of the practice of these professions. Not all ethical principles are self-evident in all specific circumstances, and it is useful to spell out the broad lines of the reciprocal relationship of trust that should be built up between client and attorney.

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### 4. THE CODE OF CONDUCT

#### 4.1 Preamble

- i. The Code as presented contains specific comment about some behaviours by way of illustration to assist attorneys and their clients to understand the breadth of the Code and the types of conduct covered. The specific instances are not exhaustive and in no way limit the impact of the principles on the individual attorney's method of practice.
  - ii. This Code does not diminish an attorney's responsibility to act according to law. In addition, it does not in any way diminish client's rights.
  - iii. If an attorney is registered to practise in more than one profession, the Code will apply where the attorney is acting in his or her capacity as a patent and/or trade marks attorney.
- i. The Patents Act 1990 allows legal practitioners, who are not patent attorneys, to carry on the business, act or practise as a patent attorney but they must not describe themselves as patent attorneys. They are not allowed to prepare specifications, except under specified conditions, such as acting under the instructions of a registered patent attorney, or acting at the direction of a court. The Act also allows the client of a registered patent attorney the right to claim privilege in relation to communications with the patent attorney in appropriate circumstances.
  - ii. The Trade Marks Act 1995 allows any person to practise before the Office in trade mark matters, but only registered trade marks attorneys have the right to describe themselves as trade marks attorneys or trade marks agents. The Act also allows the client of a registered trade marks attorney the right to claim privilege in relation to communications with the trade marks attorney in appropriate circumstances.

#### 4.2 Code

- 4.2.1 Only registered patent attorneys, as defined under the Patent Act 1990, may undertake all aspects of practice as patent attorneys and may describe themselves as patent attorneys. Only registered trade marks attorneys, as defined under the Trade Marks Act 1995, may describe themselves as trade marks attorneys or as trade mark agents.
- iii. An attorney must not undertake work for which he/she is not qualified, for example, an attorney must not purport to be able to represent a client before a court.

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- 4.2.2 An attorney supervising unqualified staff is responsible for the work of the unqualified staff.
- i. If a client is dealing with a staff member who is not an attorney, the client must be advised that the staff member is not registered. The staff member must work under the active supervision of an attorney.
- 4.2.3 In the interests of clients, the qualifications of an attorney to practise will be clearly indicated, and appropriate expertise, including technical expertise, will be brought to bear on work entrusted by clients.
- 4.2.4 Where an attorney engages another practitioner, either in Australia or in another country to act on behalf of a client, the attorney must make reasonable investigations and inquiries to satisfy himself or herself that the other practitioner is appropriately qualified to carry out the work required.
- 4.2.5 An attorney must at all times maintain standards of professional practice which are at once courteous, ethical and well-informed.
- i. An attorney must act according to, and uphold the norms of the profession.
  - ii. An attorney must not act in a way that is fraudulent or deceitful and must at all times ensure that his/her conduct is appropriate to the professions.
- iii. The success of the professions relies heavily on trust, honesty, and a high standard of behaviour as described in the following paragraphs.
  - iv. An attorney must make available to a client information regarding the implications of having the attorney act on the behalf of the client in a matter, in terms of procedures, cost and timing. This will ensure that the client is made aware of the likely costs of the actions that are necessary or recommended by the attorney.
  - v. At the request of a client, an attorney must provide a detailed estimate of the cost of acting for the client in a particular matter.
  - vi. Where an attorney withdraws his or her services or ceases to act for a client, the attorney must advise the client of any actions necessary to maintain the intellectual property rights of that client.
- 4.2.6 An attorney must handle the funds of a client in accordance with proper accounting practices. An attorney must not use monies paid by a client other than for the purposes for which the monies are paid.

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- 4.2.7 An attorney must at all times act within the law and subject to that obligation in the best interests of the client.
- i. An attorney must act promptly on a client's instructions or promptly advise a client of his or her inability to do so.
  - ii. An attorney must not use his/her position to take advantage of -
    - information given to the attorney by a client, or
    - circumstances resulting from the professional relationship with a client, either on his/her own account or on behalf of another person.
  - iii. A client should be given an opportunity to view drafts of specifications where time allows.
  - iv. An attorney must make suitable arrangements for a client to have access to a qualified practitioner at any office at which the attorney carries on business.
  - v. Subject to the client satisfying any lien imposed in accordance with the relevant legislation, all documents, samples and other material that is the property of the client must be made available or forwarded to the client on request.
- 4.2.8 An attorney must take all reasonable steps to avoid situations in which a conflict between the interests of a client and the interests of the attorney or those of another client may occur.
- i. Where a conflict or a potential conflict arises, an attorney must take immediate steps to resolve the conflict. Where the rights of a person might be put at risk by failing to act urgently in a conflict or potential conflict, the attorney must take the necessary action to maintain the rights of a person and then immediately resolve the conflict.
- 4.2.9 An attorney must not engage in behaviours or practices which are misleading or deceptive, or that are likely to mislead or deceive.
- i. To mislead someone may include:
    - lying to them;
    - leading them to a wrong conclusion;
    - creating a false impression;
    - leaving out (or hiding) important information; and
    - making false or inaccurate claims.
  - ii. Advertising is permitted but it should be honest and accurate and it should avoid the pitfalls described above. If it is of a comparative nature it must be factually supportable and any comparisons must not be misleading.

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- iii. The Trade Practices Act 1974 also prohibits misleading and deceptive conduct and the making of false representations. The legislation applies to the conduct of registered attorneys, including their advertising and other promotional activities.

## 5. WHAT IS EXPECTED OF CLIENTS

- 5.1 The following is intended to assist a client in understanding what makes for a successful relationship with an attorney.
- 5.2 Clients should:
- assist the attorney to provide appropriate advice or take appropriate action by disclosing all relevant information they hold in respect of the rights sought;
  - provide attorneys with clear and timely instructions based on the advice given;
  - provide timely responses to requests from the attorney;
  - settle accounts provided by attorneys promptly, including charges for overseas actions commissioned by the attorney in accordance with client instructions;
  - provide advance payments when requested; and

- observe the same standards of honesty and courtesy in the relationship as are required of the attorneys themselves.

## 6. COMPLAINTS AGAINST AN ATTORNEY

### 6.1 Grounds for complaint

- i. A complaint may be made on the grounds that an attorney:
- has breached this Code;
  - has engaged in unprofessional or unsatisfactory conduct;
  - was unqualified at the time of registration; or
  - has obtained registration by fraud.

### 6.2 Complaints

- i. Clients are encouraged to discuss a grievance with attorneys to attempt settlement before a complaint is made.

- ii. Complaints about conduct of members of the Institute of Patent and Trade Mark Attorneys can be made to the Institute under the Institute's Code of Ethics. The Institute is a professional body for patent and trade marks attorneys which assists them to uphold their professional obligations.

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- Membership is not compulsory, but many attorneys are members. The Institute considers complaints in relation to its Code of Ethics.
- iii. A complaint regarding the conduct of an attorney under this Code is made in the first instance to:
- the Professional Standards Board for Patent and Trade Marks Attorneys; and
  - subsequently, where the Board determines that it appears that the attorney may be guilty of unprofessional or unsatisfactory conduct, to the Patent and Trade Marks Attorneys Disciplinary Tribunal.
- iv. A person who makes a complaint under one of the above regimes is not precluded from making a complaint under the other regime or pursuing his/her rights under the law.
- ### 6.3 Form of complaints
- i. The form of a complaint to the Professional Standards Board for Patent and Trade Marks Attorneys is included in the Patents Regulations.
- ii. The Regulations provide that the complaint must
- state the name of the attorney complained about and the address of the attorney if known to the complainant;
  - state the nature of the complaint;
  - state the name and address of the complainant;
  - be signed by the complainant; and
  - be accompanied by a statutory declaration stating the facts on which the complainant relies to support the complaint.
- iii. The complainant should provide all evidence which supports the complaint.
- ### 6.4 Contacts
- i. A complaint about the conduct of an attorney under this Code of Conduct must be made to:

### The Secretary

Professional Standards Board for Patent and Trade Marks Attorneys

PO Box 200

WODEN ACT 2606

Telephone: (02) 6283 2345.

- ii. Further information on making a complaint to the Institute of Patent and Trade Mark Attorneys of Australia about the conduct of a member of the Institute under its Code of Ethics can be made to:

### The Executive Secretary

The Institute of Patent and Trade Mark Attorneys

1 Little Collins Street

MELBOURNE VIC 3000

Telephone: (03) 9650 2399.