



**THE AUSTRALIAN ASSOCIATION OF THE
FEDERATION OF INTELLECTUAL PROPERTY ATTORNEYS
FICPI AUSTRALIA**

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By email

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RE: Consultation on IP Attorney Competencies

About FICPI Australia

FICPI Australia is the Australian National Association of the International Federation of Intellectual Property Attorneys (FICPI).

FICPI is the only international NGO whose membership consists exclusively of IP attorneys in private practice. FICPI, therefore, represents a key constituency of the international IP system.

Founded more than 100 years ago in 1906, FICPI now has more than 5,000 members, including from the US and Japan, Australia and New Zealand, a strong European membership and national sections in India and China. Further details regarding FICPI can be found at www.ficpi.org.

Submission

FICPI Australia welcomes the opportunity to respond to the consultation on the draft Competencies Framework and the questions on IP attorney competency. In preparing this submission we note that FICPI members hold a range of views — most notably on the proposal to de-couple trade marks from the patent attorney requirements. FICPI has, however, formed considered positions on the matters set out below, rather than treating all member views as carrying equal weight.

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In this submission we:

1. Provide an overview of the relevant context that must be taken into consideration;
2. Respond to the two policy matters in the consultation paper:
 - a. the proposed de-coupling, and
 - b. the proposed trade marks attorney employment requirement;
3. Address what FICPI regards as the most important substantive gap in the current arrangements: the shallow treatment of international patent law and practice;
4. Address a number of additional matters central to attorney competency that fall outside the consultation's framing:
 - a. the standard of accredited courses,
 - b. a restricted practice period,
 - c. the enforcement of registration in the trade marks space,
 - d. the impact of artificial intelligence (on which the review is silent), and
 - e. the under-representation of designs.

1. Context: the profession and its international setting

a. The profession is small and slow-growing

The trans-Tasman attorney profession is small, and it is not growing. Analysis of the Trans-Tasman IP Attorneys Register shows that registered attorney numbers rose from 1,003 in January 2018 to 1,084 by mid-2026 (870 in Australia and 214 in New Zealand) — a net increase of just 81 practitioners in more than eight years, a compound annual growth rate of under 1%. That near-stasis is the product of 288 new registrations being almost entirely offset by 207 departures over the same period. It also represents a marked deceleration: the profession grew at an estimated compound rate of around 4.6% between 2001 and 2018, roughly five times the recent rate.[1] That scale and trajectory matter: distinctions and requirements that might be absorbed by a large profession have a magnified effect here, and clarity and consistency are correspondingly more valuable.

b. New Zealand is not peripheral

New Zealand is a material part of this single trans-Tasman market and profession. To put its scale in proportion, IPONZ received in the order of 6,100 patent, 28,800 trade mark and 1,400 design applications in 2020/21 (the most recent annual totals readily available)[16], against Australia's roughly 30,300 standard patent and 97,345 trade mark applications[4] and 10,296 design applications[9] in 2025: New Zealand patent filings are on the order of a fifth of Australia's, and trade mark filings around a third. Consistently, 214 of the profession's 1,084 registered attorneys — close to one in five — are based in New Zealand. The same regulatory regime, register and competency standards apply across both countries.

c. Existing distinctions are already unusually granular

FICPI acknowledges a genuine distinction between patent practice and trade marks practice. Patent practice requires a scientific or technical background and a particular set of drafting and interpretation skills; trade marks practice is more legal and commercial in character, although similar prosecution and advocacy skills are held in common.

The degree to which Australia and New Zealand differentiate *who may do what according to their qualification to practise* is unusual by international standards. In many comparable

jurisdictions there is no such finely grained separation of entitlements by entry qualification; differentiation arises instead through experience and chosen area of practice *after* qualification. Germany is a leading example: its patent attorneys (Patentanwälte) are trained and qualified across the whole field of industrial property — patents, trade marks and designs — with the qualifying training expressly including placements in the patent and trade mark divisions of the German Patent and Trade Mark Office and on the Boards of Appeal for Trade Marks at the Federal Patent Court.[2] Even in jurisdictions that maintain separate professions, such as the United Kingdom, the patent attorney qualification itself includes foundation-level competence in trade mark law and in designs and copyright.[3]

Overseas attorneys, lawyers and clients frequently find the number and granularity of Australian distinctions confusing. This is an important backdrop to the de-coupling proposal in particular: the international trend is toward broad qualification and practice-led specialisation, not toward further fragmentation of entry requirements.

d. The significance of this context

This context matters because regulatory complexity has a disproportionate effect in a small, integrated and slow-growing profession. Patent and trade marks practice are different, but those differences are better managed through training, experience and professional choice than through increasingly narrow qualification silos. Further fragmentation of entry requirements should therefore be avoided unless there is a compelling justification.

2. Response to the Consultation Paper

a. De-coupling trade marks from the patent attorney qualification (Questions 1 and 2)

FICPI's position on de-coupling

FICPI members are divided on de-coupling. Some members, in larger and more specialised practices, see merit in it; others oppose it. FICPI sets out the competing considerations fairly, but does not regard every argument advanced for de-coupling as well-founded, and on balance does not support it.

The genuine case for de-coupling

The genuine case for de-coupling is that, in larger practices, work tends to be specialised: patent attorneys practise patents, trade marks are handled by dedicated specialists, often lawyers, sometimes trade marks attorneys, and patent attorneys are not in practice called upon to do trade marks work. For an individual in that setting, in-depth trade marks knowledge is arguably not essential to their daily competent practice. That is a real point, and FICPI does not dismiss it.

Why curriculum pressure is not a sufficient justification

A second argument — that de-coupling is needed to free curriculum room to teach international patent practice properly — FICPI does not accept. The content of the qualification should be determined by what competent practice requires; the course should then be designed to deliver that content. Removing essential content in order to fit the existing course inverts that relationship. It is the tail wagging the dog. If both trade marks competence and deeper international patent content are required for competent practice — and FICPI submits that both are — then the course should be structured, and if necessary expanded, to deliver both, rather than narrowed by dropping one to accommodate the other. The right

question is not “what will fit into the current course?” but “what must a competent attorney know, and how should the course be built to deliver it?” Using a curriculum-capacity constraint to justify stripping out a core competency is a poor basis for a structural change to the profession.

Why broad trade marks competence remains necessary

FICPI's substantive reasons for opposing de-coupling are as follows.

The position is materially different in small and medium-sized firms, where it remains common for one attorney to handle both patent and trade marks matters. For those practitioners and their clients, trade marks competence is integral to competent practice. In direct response to **Question 2**, clients of such firms — and most SMEs in particular — rely very strongly on their patent attorney for trade marks work and advice. This is unsurprising given the scale of domestic trade marks activity: a record 97,345 trade mark applications were filed in Australia in 2025, up 13.3% on the previous year, with residents accounting for the majority (around 57%).^[4] An assessment of client reliance drawn only from large-firm experience will substantially understate the reliance that exists across the rest of the profession.

Australian attorneys are widely regarded as “IP advisors” and are expected to hold a broad working knowledge of IP in all its forms — patents, trade marks, designs and copyright. This matters even for an attorney who does not maintain both registrations or who has a predominant area of focus: such an attorney must still be able to guide a prospective applicant across all forms of IP protection, including by recognising when a matter should be referred to a colleague with more relevant experience. Removing the basic trade marks knowledge requirement risks attorneys becoming narrowly focused on the areas in which they can advise while overlooking other areas that warrant enquiry or advice — an outcome detrimental to users of the IP system. This is not only a concern for smaller practices. Even within the largest firms, a practitioner who specialises narrowly still needs an expansive working knowledge of IP across all rights — not in order to practise across them, but so as to be able to give a client at least sound initial advice on the full range of available protections, and to conduct IP audits. An audit, by its nature, requires the practitioner to assess a client's position across patents, trade marks, designs and copyright as an integrated whole; a specialist equipped to recognise only their own right cannot perform that task competently. A broad IP literacy is therefore a baseline requirement of the role at every level of the profession, not merely a feature of generalist practice.

At the FICPI Australia Conference for IP Leaders in August 2025, a workshop on education requirements considered the knowledge and skills needed a newly registered patent attorney requires. In summary, participants identified:

- a. Legal knowledge
 - Knowledge on fundamentals of the legal system and how to research and summarise the law on IP topics;
 - Good knowledge of IP Law and basic knowledge of adjacent law;
 - Fundamental knowledge of IP laws of major trading partners and IP Conventions;
 - Knowledge of ownership and entitlement issues for IP rights as well as commercial context and strategy issues.
- b. Attorney skills

- Drafting skills of patent specifications, trade mark specifications and designs applications;
- Prosecution skills;
- Critical analysis skills;
- Basic knowledge of handling disputes and basic advocacy skills;
- Communication skills – clear, plain English writing.

For trade marks attorneys, the difference was that detailed knowledge of patents was not considered necessary; but participants were unanimous that patent attorneys need broad IP knowledge, including a working knowledge of trade marks.

This integration is not a recent or incidental feature of the profession; it is its historical foundation. A separate registered trade marks attorney profession was established only with the amendment to the *Trade Marks Act 1995* in 1998.[10] Before then, patent attorneys commonly practised trade marks and related rights, building deep competence through experience — particularly in smaller and regional firms — and shaping the client expectations and professional norms that still prevail. The current system continues to embed that integration: every registered Australian patent attorney is already qualified to register as a trade marks attorney.[11] De-coupling would unwind a long history of integrated practice.

There is also a consumer-protection dimension. The formal trade marks subject requirement is the only guaranteed baseline of trade marks competence across the whole profession. Remove it and that competence is left to voluntary continuing education or to whatever on-the-job exposure an individual happens to encounter — a weaker, less consistent and less enforceable safeguard than a formal entry requirement, and one that sits awkwardly with the Board's competency-assurance mandate. This also compounds the difficulty identified in section 1. The more finely the profession fragments entitlements according to entry qualification, the harder it becomes for overseas associates to know whom they may safely instruct. An associate who today instructs an Australian patent attorney in the confidence that related trade marks (and designs) matters can be attended to would, after de-coupling, first have to ascertain which of several narrower qualifications a given practitioner holds before instructing them — introducing precisely the confusion and friction in cross-border instruction that section 1 describes.

Finally, de-coupling would move the profession in precisely the opposite direction to the legal profession. The far larger legal profession rests on a single qualification: a lawyer is admitted once, to practise law generally, and develops specialisation through experience and choice of practice area, not through separate qualifying credentials. For the much smaller IP attorney profession to splinter its single qualification into separate patent-only and trade-marks-only entry credentials would run directly counter to that model — and counter to the international pattern described in section 1. The trend among comparable professions is toward one broad qualification with practice-led specialisation, not toward more entry qualifications. There is, moreover, a skills-based cost to narrowing what a patent attorney studies that is easily overlooked. The trade marks and broader IP components of the qualification are not merely items of substantive knowledge; they are among the principal vehicles through which a trainee develops the skills common to all legal work — ascertaining what the law is, and applying it to a particular problem. Narrowing that content reduces the practice a student obtains in those core skills, and in particular reduces the legal research a student must undertake, which is itself a critical professional competency. A narrower curriculum thus yields not only a narrower knowledge base but a practitioner less practised in the fundamental legal disciplines of research and applied reasoning.

In response to **Question 1**: in-depth trade marks knowledge may not be essential to the daily work of every patent attorney, particularly in specialised large firms; but a sound working knowledge of trade marks law and practice remains important to competent patent attorney practice generally, and essential for the substantial part of the profession that advises across the IP spectrum. FICPI would urge caution before de-coupling.

A telling data point provides insight: of roughly 820–870 Australian registered patent attorneys (≈ 850 around 2021, 870 by mid-2026), 696 held dual registration in 2021 [20] — that is, they were also registered as trade marks attorneys. If the qualification were truly irrelevant, why would roughly four in five — about 80% ($696 \div \sim 850$ patent attorneys $\approx 82\%$) — of Australian patent attorneys also be registered trade marks attorneys, given that renewal fees and Continuing Professional Education obligations are higher for those holding both? Maintaining a registration is not the same as practising in the field, but it is indicative of the value practitioners place on holding both.

The burden de-coupling would place on generalists and new entrants

De-coupling risks a step backwards for new entrants. Under the current single qualification, a patent attorney is qualified to practise in both patents and trade marks. Remove trade marks from the patent attorney knowledge requirements and an entrant who wishes to practise both must obtain two separate qualifications where one presently suffices. That increases the time, cost and complexity of qualifying for precisely the generalist practitioners that small and medium-sized firms and many regional and individual clients depend on, and it disadvantages those who wish to change the focus of their career or to start their own practice. The profession needs to preserve, not narrow, the range of viable career pathways. It is not an answer to the specialisation of large firms to impose a double-qualification burden on everyone else.

The cost-allocation problem: who benefits and who pays

Requiring someone to study and be examined on material they may never use is a real cost: it adds time and expense at the entry stage, and for a big-firm patent specialist whose trade marks knowledge will sit unused and slowly atrophy, you can fairly call it deadweight. That is the honest core of the “free up the curriculum” argument — the hours spent on trade marks could instead deepen patent drafting or international practice. The objection therefore deserves to be taken seriously rather than waved away.

But weigh what that cost actually is. It is a one-off, foundational study component within a single qualification — working knowledge, not specialist depth — and several of the underlying topic groups are shared with the patent material anyway, so the genuinely trade-marks-specific increment is modest. It is knowledge, not a second registration, not a second experience requirement, and not a recurring burden. And even for the patent-only specialist it is not pure waste: they still field client questions that touch trade marks, still need to recognise a trade marks issue well enough to refer it, and are still held out to the public as an IP advisor. Breadth that one does not use daily is a normal and defensible feature of a professional qualification — lawyers and doctors carry plenty of it — because it underwrites mobility, referral competence and holistic advice.

Now consider the opposite position. De-coupling does not remove a cost; it relocates and enlarges one. The person who wants to practise both — which, on the register data, is the norm, not the exception, since roughly four in five patent attorneys already hold both registrations — would have to complete two separate qualifications, each with its own

requirements, and (given the Question 3 proposal) potentially two separate experience requirements. That is not a modest one-off study component; it is a structural, recurring barrier to the most common career path in the profession.

The decisive point is who bears each cost. Under the integrated system the burden falls on the minority who will specialise patent-only in large firms — the best-resourced people in the profession, sitting inside the firms with the most training infrastructure, who can absorb a modest study component without difficulty. Under de-coupling the burden falls on the generalists: the small and regional firms, the new entrants, the people who want to change focus or start their own practice, and, downstream, the SME and individual clients who depend on a single practitioner being able to handle both. So the proposal lifts a small, well-absorbed cost off the strong and drops a large, structural cost onto the many and the weak. That is a regressive trade, and it is essentially the “tail wagging the dog” point in another form: the qualification would be redesigned around the convenience of the specialist minority at the expense of the generalist majority.

There is also an optionality asymmetry worth naming. Under the current system the big-firm patent attorney is never forced to *practise* trade marks — they simply hold the knowledge and can let it lie. Under de-coupling the dual practitioner is positively forced to obtain a second qualification before they may act. One system preserves choice; the other removes it. Making a patent specialist carry some unused trade marks knowledge is therefore a small and reversible inefficiency, whereas making every would-be generalist qualify twice is a large and structural one — and the additive “IP Attorney / Patent Agent / Trade Marks Agent” model proposed below exists precisely so that the specialist who genuinely wants a narrow path can have it without imposing the double-qualification cost on everyone else.

If reform proceeds, it should be additive rather than substitutive

FICPI Australia's position is that retaining the status quo is preferred. However, if a more granular approach is nonetheless pursued, it should be additive, not substitutive. Should the Board conclude that greater granularity in registration is desirable, FICPI submits that any new, narrower registration should be introduced only on the condition that the existing comprehensive registration is retained alongside it.

The proposed IP Attorney / Patent Agent / Trade Marks Agent model

The most workable and internally consistent form of this is a three-tier model:

- **“IP Attorney”** — the current patent attorney registration, retained and renamed to reflect its true scope across patents, trade marks and designs (and, in practice, copyright and confidential information), with its integrated education and experience requirements preserved;
- **“Patent Agent”** — a new, optional, specialist registration focused exclusively on patent drafting, prosecution and enforcement, available to those who wish to pursue a patent-only career; and
- **“Trade Marks Agent”** — the current trade marks attorney registration, renamed for consistency, as a specialist registration focused exclusively on trade marks.

This terminology of “agent” is deliberate. While it would be possible to redefine the “patent attorney” title for the above defined “patent agent” title while leaving “trade marks attorney” title unchanged, this would likely create confusion because the “attorney” element of the title

is known to be used by both patent and trade mark practitioners. The bare de-coupling proposal would also suffer from the same likely confusion. The “agent” designation is well understood internationally — in both the United States and Canada a “patent agent” is precisely a patent-only practitioner — and reserving the title “attorney” for the holder of the full, integrated qualification does important work for consumers: “attorney” would signal broad IP competence across all rights, while “agent” would signal a single-right specialist. Retaining “trade marks attorney” alongside “IP Attorney” and “Patent Agent” would blur exactly that distinction and dilute the meaning and value of the “IP Attorney” title; renaming it “Trade Marks Agent” keeps the scheme coherent. (The Trade Marks Act already recognises “trade marks agent” as a usable title.) The model as a whole also aligns with the Board's own identity as the Trans-Tasman *IP Attorneys* Board, and with the reality that many practitioners already describe themselves as “IP attorneys”.

This additive model avoids the central defect of substitution-based de-coupling. It does not force an entrant who wishes to practise broadly to obtain multiple qualifications, because the comprehensive “IP Attorney” registration remains available as a single pathway, while allowing those who prefer to specialise to register as a Patent Agent or a Trade Marks Agent (or both). It preserves the broad-competence conception of the profession and its standing internationally, and it allows the market to decide rather than requiring the Board to pick the outcome in advance: if there is real demand for narrowly specialised practitioners, the specialist registrations will be taken up; if the profession and its clients continue to value broad IP competence, the IP Attorney registration will remain the norm. Under this model no practitioner or client is left worse off than under the current single registration.

Demoting the term “patent attorney” to be patent only practitioners as per the bare de-coupling proposal is unlikely to be popular with existing registered patent attorneys as it will likely negatively reflect on them by suggesting that they only practice in patents. It is also conceivable that demoting current “trade marks attorneys” to be “trade marks agents”, as per the above proposal, may also be unpopular. Grandfathering of use of the terms is recommended.

b. Trade marks attorney employment requirement (Question 3)

FICPI supports an employment requirement. Employment requirements would increase the competency of the trade marks attorney profession, and the additional barrier to entry is, on balance, a reasonable cost.

The scale of trade marks practice justifies stronger competency assurance. The trade marks profession has grown substantially since it became regulated — domestic trade mark filings reached a record 97,345 in 2025[4] — which only strengthens the case for assuring the practical competence of those entering it.

Practical competence requires supervised experience. Practical competence in trade marks practice, as in patent practice, is built through supervised experience and not through coursework alone, and aligning the trade marks pathway with the patent pathway — which already requires supervised experience and a Statement of Skill — is a sound step toward that end.

The more important question, however, is not only what is required *before* registration, but what is required *after* it when an attorney practises independently. The Board should therefore also consider post-registration independence.

In addition, it is important to consider representation data. The proportion of the 97,345 trade mark applications filed with professional representation is not separately broken out in the published figures available to FICPI; the Board and IP Australia, which hold the underlying data, are well placed to quantify it, and FICPI encourages them to do so, because a large unrepresented cohort would strengthen — not weaken — the case for assured competence among those who do act for the public. The trend is plainly toward more self-filing: on the patent side, where the data are published, self-filing among *provisional* patent applicants rose to 52% in 2025, up from 19%–27% across 2021 to 2024.[18] While we do not have a specific figure, it is also understood that the proportion of self-represented trade mark applicants is also increasing.

3. The real gap: international patent law and practice

a. The gap in international patent practice

The most significant substantive weakness in the current arrangements is the shallow treatment of international patent law and practice. International content is presently taught at a high, overview level, leaving a clear gap in graduates' ability to prosecute a patent family across multiple jurisdictions. This deserves attention, and the evidence on where patent work actually originates and where it is destined bears this out.

b. Why the gap matters in practice

The Australian patent system is overwhelmingly a destination for foreign-originating work: non-residents consistently account for more than 90% of all standard patent applications filed in Australia (91.9% in 2023).[5] At the same time, Australian applicants file thousands of patent applications abroad each year — around 8,700 in 2024 — and they do so overwhelmingly into the major trading-partner jurisdictions, led by the United States (around 38%), followed by the European Patent Office (around 11%), China, Japan and New Zealand.[6] For many — perhaps most — local clients, therefore, it is more important that a specification will withstand scrutiny at the USPTO (and at the EPO, CNIPA, JPO and KIPO) than that it meets Australian or New Zealand requirements alone.

c. Why the draft Framework does not solve the problem

As set out in section 2, this need should drive the content of the qualification, and the course should be built to deliver it. The draft Framework recognises the issue but, in FICPI's submission, responds in a way that is at once too narrow and too ambitious.

Too narrow. The expansion of knowledge of the IP laws of our major trading partners is limited to patents (see footnote 1 of the draft Competencies), leaving designs out altogether and trade marks addressed only through any separately registered trade marks attorneys. Narrowing the international expansion in this way sits oddly with the broad-competence rationale that otherwise underpins the profession, and it again relegates designs to the role of poor cousin (see section 4(e)) — a relegation increasingly hard to justify given the steady year-on-year growth in design filings (a record 10,296 applications in Australia in 2025, following 9,583 in 2024).[9]

Too ambitious. Competency items 22 and 23 set the bar in a way that is unrealistic for entry-level attorneys. Item 23 would require an attorney to be knowledgeable, qualified and skilful in preparing a patent specification, including suitable claims (or support for suitable claims), defining patent-eligible subject matter across the key jurisdictions (US, EP, CN, JP, CA and

KR). Item 22 would require the attorney to be knowledgeable and skilful in preparing draft response arguments to examiners' reports in those jurisdictions and to draft amended claims and specifications suitable for review and submission by foreign associates. In reality these are competencies acquired only after many years of practice, if at all. Notwithstanding the international harmonisation of many material patentability requirements, the detail differs significantly between these jurisdictions — in the assessment of inventive step, of “support” and enablement, and of patent-eligible subject matter — and recent local uncertainty over the manner-of-manufacture test illustrates how much turns on the detail. To impose these as registration-level competencies risks either tokenistic teaching or a standard that cannot honestly be met.

d. A better approach: PCT-centred competence

FICPI submits that the requirements should instead focus on strengthening and substantially deepening the core skills of patent drafting and of dealing with objections, taught through a PCT-centric lens, with Australian and New Zealand addendums where required. The underlying premise is sound: all else being equal, a well-drafted PCT specification ought to meet the patentability requirements of the member states of the PCT. This focus also reflects how applications actually move: the PCT national-phase route is the predominant means by which applications enter Australia and by which Australian applicants file abroad.[6] Teaching that is PCT-centric, supplemented by AU/NZ specifics, and retaining overview-level treatment of US, EP, JP, CN, KR and CA requirements relative to the AU/NZ base, would build genuinely transferable competence and meet the increased need for trans-Tasman attorneys to account for the requirements of major trading partners.

e. Fundamentals first, advanced international practice later

Underlying this is a point about sequence and emphasis. The registration-level standard should first require students to demonstrate the fundamental skills of drafting, and only then build toward more advanced topics such as international drafting considerations. In FICPI's experience this matters: some students still struggle to draft a valid claim 1 that is clearly novel and at least arguably inventive, and to provide proper support for that claim in the body of the specification. Those are the foundational competencies that education at this level must impart. There is, moreover, little fundamental difference between drafting a sound specification and drafting a PCT specification — the underlying skills are the same. The drafting case studies used at university (drawn from old Board and IPTA papers) deliberately create an artificial, contained environment in which those key skills can be isolated and tested; in reality, drafting a PCT specification is simply a larger exercise resting on the same foundations. A registration-level standard that rigorously assesses the fundamentals of drafting and claim support is therefore the right floor, from which the more advanced international competencies presently expressed in items 22 and 23 can develop through subsequent practice. On this approach, items 22 and 23 should be dropped and rephrased accordingly.

f. Building the course around the content

Consistent with the principle in section 2 — content first, course second — the course can and should be designed to carry this material. By way of illustration of the room available:

- Topics E (Patent Law) and F (Patent System) could be recast so that topic E focuses on Australian patent law and practice, and topic F focuses on New Zealand and the rest

of the world. (The current guidance directs topic F to prosecution and maintenance in Australia, New Zealand and other countries.)

- The “overview of IP” component should be broadened to cover an “overview of technology transfer” and “commercialisation of IP”.

These changes would strengthen the course's capacity to deliver the international patent content the profession needs while preserving broad competence. Where restructuring of this kind proves insufficient, the proper response is to expand the course to fit the required content — not to sacrifice essential content, such as trade marks, to fit the course.

4. Additional issues for consideration

a. The standard of accredited university courses

Competence begins in the accredited courses. FICPI submits that course standards must remain high, and that where individual courses fall below the expected standard they should be identified and lifted, with de-accreditation available as a last resort. FICPI supports the Board's parallel work on the Accreditation Framework and the planned review of select courses, and encourages the Board to apply it rigorously. A consistently high entry standard is the foundation on which every other competency measure rests, and it is especially important in a small profession where each cohort is small and variation between providers is readily felt.

b. Registration should not confer immediate independent practice rights

Immediate independent practice is unsafe

Registration currently enables immediate independent practice — and that is dangerous. On registration, a patent attorney or trade marks attorney may set up and practise on their own account, and hold themselves out as a principal, with no further period of supervision. This does not reflect how competence is treated inside firms, where a patent attorney is generally not regarded as competent to practise with minimal supervision until around five years' experience, and often closer to ten before practising unsupervised at principal or partner level. The two-year pre-registration experience requirement is a low floor, and registration converts that floor directly into a licence for wholly independent practice. There are, from time to time, junior attorneys who establish their own practice too early and who, lacking sufficient experience, produce substandard or even negligent work — to the detriment of their clients and the public.

A restricted-practice period would mirror the legal profession

The comparison with the legal profession must be drawn precisely, because the two systems are not equivalent. A lawyer's period of supervised legal practice is served *after* admission, as a condition on the practising certificate, before the lawyer may practise unsupervised or as a principal. That is not the same as the patent attorney's *pre*-registration work experience, nor as the trade marks experience requirement now proposed: both of those are completed before registration, after which independent practice is immediately permitted. The legal profession builds in a post-admission safeguard at exactly the point where the attorney profession has none. FICPI therefore recommends a formal restricted practice period — a defined period of supervised practice *after* registration, before an attorney may practise independently or hold themselves out as a principal — mirroring the safeguard the legal profession builds in, rather than the existing attorney model. The draft Framework's

recognition that it “does not prescribe independent practice on registration” is welcome, but it has no practical mechanism behind it; a restricted practice period would give that principle real effect. A self-policing framework would complement this proposal but should not, in FICPI’s submission, stand in place of it.

The profession’s demographics make supervision more important

This concern is sharpened by the profession’s demographics. The register data show not only stagnant overall numbers but an ageing, thinning senior cohort: the 207 attorneys who left the register since 2018 may represent up to 45% of the experienced 2001-era cohort, meaning the profession has lost well over a third — and possibly almost half — of the senior practitioners who carry the deep institutional knowledge required to mentor the next generation.[1] As the pool of experienced supervisors shrinks, ensuring that newly registered attorneys are properly supervised before practising independently becomes more important, not less.

The public-protection purpose

Above all, the public-protection dimension is of primary importance. The purpose of every measure in this part of the submission is to ensure that a person who holds themselves out to the public as competent to act independently is in fact competent to do so. A restricted practice period would, together with reserved-practice measures, give that protection real effect, and would align the profession with both the legal profession and the realities of how competence is actually acquired. It also bears directly on, and is complementary to, the Board’s parallel work on Supervision Guidelines.

The Board needs a stronger legislative footing

A related and more fundamental problem is that the Board’s competency ambitions are not matched by the regulatory framework that is meant to support them. The Regulations set only a thin standard. Regulation 20.10 of the *Patents Regulations 1991* requires two years’ employment giving experience in *one or more* of five listed skills; regulation 20.11 provides that this is evidenced by a “statement of skill” — in substance, the opinion of a patent attorney registered for at least five years that the applicant has experience in one or more of those skills. The Regulations prescribe neither what is to be assessed beyond that bare requirement nor how; and section 198(4) of the *Patents Act* then makes registration *mandatory* once the prescribed conditions are met.[17] By contrast, the Board’s guidance — and, increasingly, the draft Competencies Framework — expect a great deal more: well-rounded experience across all aspects of practice, exposure to oppositions and IP management, searching across Australian, New Zealand and international databases, and so on. There is a genuine mismatch between the rich competency standard the Board seeks to set through guidelines and the thin standard the Regulations actually prescribe. To the extent the Board’s guidelines or Framework are treated as imposing registration requirements beyond those in the Regulations, they are arguably *ultra vires*: the Board cannot, by guideline, add to the conditions that the Act and Regulations make determinative of what is a mandatory registration decision. FICPI submits that the Regulations must be amended to *enable* the Competencies Framework and associated guidelines and give them a sound legislative footing; otherwise the Board’s competency work is exposed to challenge and may prove unenforceable.

FICPI raises these matters with respect for the Board and its work, but considers it a real shortcoming that the review confronts neither the central danger — that registration presently licenses immediate independent practice — nor the inadequacy of the regulatory foundation

for the competency standards the Board is developing. FICPI recognises that the Board does not currently have the power to introduce a restricted practice period of the kind recommended here, nor, by guideline alone, to lift the registration standard to the level its Framework envisages. That is precisely the point: the Board should be given those powers, through amendment of the Regulations and, where necessary, the Act. FICPI urges that this be pursued with IP Australia and government as a matter of urgency. Protection of the public should not wait.

c. Public protection requires reserved practice, not title protection alone

The rationale for reserved practice

The restrictions on who may practise exist to protect the public and applicants from harm at the hands of unqualified and inexperienced people. That rationale is explicit in the two strongest examples in the Australian legal landscape, and the contrast they draw with trade marks, designs and copyright is, in FICPI's submission, the heart of the problem.

The benchmarks — patents and legal practice

Registration as a patent attorney provides privileges under section 200 of the *Patents Act 1990*, including protection from forced discovery as provided by subsections 200 (2), (2A) and (2B). “Patents work” is also reserved. Section 201 makes it an offence to carry on business, practise or act as a patent attorney unless registered; s 201A defines that as doing “patents work” in Australia; and s 202 prohibits even a legal practitioner from preparing a patent specification (or amendment document) unless acting under the instructions of a registered patent attorney.[13] For legal practice, the position is the same in substance: under the *Legal Profession Uniform Law* — in force in Western Australia, New South Wales, Victoria and other participating jurisdictions — s 10 prohibits an entity from engaging in legal practice unless it is a “qualified entity” (an admitted lawyer holding a current practising certificate), and s 11 prohibits holding out as entitled to do so. The express purpose of those provisions is to protect the public by ensuring that legal work is carried out only by persons who are qualified, insured and accountable.[14]

The gap — trade marks, designs and copyright

Against those benchmarks, the protection on the other side of the profession is weak or absent:

Trade marks. Only the professional title is protected. Section 156 of the *Trade Marks Act 1995* makes it an offence to act or hold out as a *registered trade marks attorney* without being registered, but the underlying work — applying for, preparing, filing and advising on trade marks for others — is not reserved. The Board itself confirms that a person does not need to be a registered trade marks attorney in order to file trade marks for others.[12] An earlier reservation of paid trade marks agency work to lawyers and patent attorneys, in the Act as originally enacted (former s 155), has since been removed — a removal that FICPI considers, for the reasons given below, to have been a mistake.

Designs. The protection is weaker still. The *Designs Act 2003* creates no registered “designs attorney” and reserves no design work to qualified persons; its offence provisions are confined to false entries and false representations about registration and the Designs Office.[15] Anyone may prepare and file designs for others.

Copyright. There is no registration system and, beyond the general prohibition on engaging in legal practice without an admitted lawyer's practising certificate, no

reserved practice at all. As a result, many people practise in areas such as copyright licensing without any specific qualification or assurance of competence.

The public-protection consequence

The consequence is a striking asymmetry. The very harms that the patents and legal-practice monopolies are designed to prevent — incompetent or unscrupulous service to applicants who cannot judge competency or quality for themselves — are left largely unaddressed precisely in the areas where unsophisticated SME and individual clients are most exposed. And the harm is not hypothetical. IP Australia and the ACCC have for years warned of entities using misleading online advertisements, false infringement and abandonment notices, and inflated-fee “registration” services to pressure small businesses, and IP Australia maintains a list of unauthorised companies and recommends that the public check with a registered IP attorney before acting.[7] More recently, IP Australia has warned of a scam that impersonates registered IP attorneys to pressure applicants into filing.[8]

Three matters FICPI urges the Board to take up

Consistent with its competency-assurance mandate, and in partnership with IP Australia, the Board should act against:

- **Fraudsters impersonating attorneys.** Scams that impersonate registered IP attorneys, or that falsely hold out an entity as entitled to act, both defraud the public and trade on the reputation the registration regime is meant to guarantee. They should be actively pursued under the holding-out and false-representation provisions (s 156 of the Trade Marks Act, s 201 of the Patents Act), supported by sustained public education and a more prominent, easily searchable public register.
- **Foreign attorneys practising in Australia.** Unregistered foreign practitioners and firms that solicit and service Australian applicants directly operate outside the trans-Tasman competence, conduct and disciplinary framework. (The extension of privilege to foreign practitioners by the Raising the Bar reforms does not subject them to Australian registration or professional standards.) This mirrors a gap the legal profession addresses by confining foreign lawyers to foreign law unless admitted in Australia, and the Board should consider an equivalent safeguard.
- **Non-registered entities practising.** The deregulated trade marks and designs space allows unregistered entities to perform attorney-type work with no competency assurance and limited accountability, while title-confusion leaves clients unable to distinguish the qualified from the unqualified. The removal of the former reservation of trade marks agency work (former s 155) was, in FICPI's view, a mistake: it withdrew a baseline public-protection safeguard from the very area of practice that serves the least sophisticated clients, and it has not been shown to have produced any countervailing public benefit. FICPI urges the Board to advocate for that mistake to be reversed — reserving trade marks (and designs) agency work to registered attorneys and lawyers, restoring in substance the protection that once existed — or, at a minimum, for markedly stronger enforcement of the existing holding-out and false-representation offences.

IP Australia's information/advice boundary

There is, moreover, an uncomfortable inconsistency in the conduct of IP Australia itself, which is part of the problem rather than only part of the solution. While IP Australia rightly warns the public to consult a registered IP attorney, it simultaneously operates self-service tools that, in FICPI's submission, arguably cross the line from providing *information* into providing

advice. Its “TM Checker” offers a free trade mark “availability check” — in substance an assessment of whether a mark is likely to be registrable, which is advice of exactly the kind a trade marks attorney gives — and its “IP First Response” tool generates tailored “options” and guidance for users facing possible infringement or disputes.[19] Presented as mere information, such tools may lead unsophisticated users to believe they have obtained a reliable professional assessment when they have not, encouraging unrepresented self-action in precisely the situations where qualified advice matters most. An office that is, on the one hand, urging the public toward registered attorneys should not, on the other, supply advice-like outputs under the guise of information. FICPI submits that the information/advice boundary in these tools should be reviewed, and that they should at the very least carry clear and prominent guidance directing users to obtain qualified professional advice.

FICPI urges the Board to counsel IP Australia against such “information services”. A warning to seek professional advice is easily disregarded precisely because the “information” comes from the government agency itself; and when that information later proves inadequate, a disclaimer that the user should have obtained professional advice will be cold comfort to the person who has relied on it and lost rights as a result. The better course is that the government should not be supplying incomplete, advice-like guidance of this kind in the first place — disclaimer or not.

Competency assurance requires control over who may practise

The value of a registered, competency-assured profession is undermined if unregistered actors operate alongside it unchecked. This issue is closely related to the competency mandate of the review, and FICPI is not sure why it has not been brought within its scope. The assurance of competency cannot sensibly be considered in isolation from the question of who is permitted to practise at all. The public deserves protection from unscrupulous and unqualified practitioners, and the integrity of the registration regime depends on it.

d. Artificial intelligence — a material omission from the review

The review does not address artificial intelligence. In FICPI's view this is a significant gap, because AI will have a substantial and near-term impact on the profession and, in particular, on how competence is acquired and taught.

AI threatens how competence is acquired and assessed

The threat is not, in the main, that AI will replace the patent attorney. High-level work — identifying the inventive concept, scoping defensible claims, and working with an inventor to articulate a novel concept — remains an expert-in-the-loop activity, where current AI offers efficiency gains of perhaps 25% to 50% rather than wholesale automation.[1] The real risk is to the training pipeline. Junior attorneys have traditionally acquired competence by doing routine and middle-tier work — drafting standardised correspondence and reporting letters, conducting initial analysis of examination reports, and preparing draft examination responses from firm precedents. That is precisely the work most susceptible to internal AI automation. When a senior attorney can automate the bulk of that routine output, the operational need for a junior to do it — and to learn from it — falls away, dismantling the ladder by which entry-level practitioners step up to competence.[1]

This danger is compounded by an already fragile and highly concentrated training base. Just six firms accounted for around half (some 147 of 288, including since-merged firms) of all new registrations since 2018, meaning the profession effectively relies on a handful of large practices to subsidise the training of the talent that the growing “long tail” of smaller firms

depends upon.[1] If competitive and margin pressures lead those firms to automate entry-level workflows, the economic justification for hiring and training a junior cohort weakens — and, because the regulatory regime rightly mandates extensive supervised practice (a qualified attorney cannot be produced in a classroom alone), the profession cannot simply bypass the apprenticeship it is eroding.[1]

There is a further, related dimension. AI is already reshaping how the accredited courses must teach and assess; providers are having to redesign assessment tasks to preserve academic integrity, and the review is silent on this. The reflection prompted by this review is therefore timely: it is an opportunity to ask what we want students to graduate with. The answer, in FICPI's view, is not only the fundamental knowledge requirements but the skills to find information they do not already hold, and to criticise, analyse and interrogate sources — skills that become critical in an AI-assisted environment, and that are properly expected of graduates of a Master's-level program.

AI creates public-protection risks that require regulatory response

There is a further dimension that connects directly to the public-protection concerns as discussed. AI tools now make it possible for members of the public — and for unregistered operators — to generate what look like professional work products: patent specifications and claims, trade mark applications, and IP advice, produced without any professional competence, oversight or accountability. FICPI regards this as a serious and growing harm. The danger of attorney work being done by the unqualified is precisely what the reserved-practice provisions exist to prevent, and that danger is, if anything, magnified by AI: an AI-generated patent specification may read plausibly yet contain fatal defects — inadequate disclosure, unsupported or invalid claims, or a disclosure that destroys the novelty of the invention — which the lay user cannot detect and, once filed, cannot cure, so that the loss of valuable rights becomes apparent only when it is too late. Unlike work done by a registered attorney, AI output carries no duty of care, no client privilege, no professional indemnity insurance and no disciplinary accountability. FICPI submits that the performance of reserved attorney work for the public by means of AI — whether by unregistered operators deploying AI tools or by AI platforms that hold themselves out as doing the work of an attorney — is harmful and should be unlawful, brought within the same prohibitions on unqualified practice that apply to human practitioners (see section 4(c)). At the very least, the law should put beyond doubt that an AI system is not a registered attorney, that anyone who deploys it to do reserved work for others remains fully subject to the reserved-practice prohibitions, and that the public must be protected — through both enforcement and education — against being misled into treating AI output as a substitute for qualified advice.

This intersects with every issue above. The erosion of on-the-job training strengthens, rather than weakens, the case for a restricted practice period, for structured training and supervision, and for robust course standards. FICPI recommends that the Board's competency work — the Framework, the revised Curriculum, the Supervision Guidelines and the CPE regime — expressly address how competence will be acquired, taught and maintained in an AI-affected profession, and that competence in the appropriate use of AI itself be considered as a competency in its own right.

e. Designs are under-represented

Designs receive comparatively little attention throughout the review — a recurring “poor cousin” treatment evident both in the draft Framework and, as noted in section 3, in the decision to confine the international expansion to patents. This is increasingly hard to justify:

design filings are at record levels, reaching 10,296 applications in Australia in 2025 (up 7.1% on the previous year), with design registrations also at a record high.[9] While the patent attorney practice outcomes touch on advising on design protection and assessing the newness and distinctiveness of a design, the treatment is thin by comparison with patents and trade marks.

That should be addressed. Designs fall squarely within the patent attorney remit and are an increasingly important element of clients' IP strategies. FICPI submits that the Framework would benefit from a fuller articulation of design competencies — including filing and prosecution, the distinction between design registration and certification, and infringement — so that designs do not fall through the gap between the patent and trade marks workstreams.

5. Conclusion

FICPI's overarching submission is that the competency framework should preserve and strengthen the broad-competence model of the trans-Tasman IP attorney profession. The profession is small, integrated and slow-growing, and regulatory fragmentation has a disproportionate effect. For that reason, FICPI does not support de-coupling trade marks from the patent attorney qualification, and if greater granularity is pursued it should be additive rather than substitutive.

The central objective should be public protection. That requires high standards in accredited courses, stronger treatment of international patent practice, assured practical experience for trade marks attorneys, a restricted practice period before independent practice, and a sound legislative foundation for the Board's competency work. It also requires attention to matters not adequately addressed in the review, including reserved practice, artificial intelligence and the under-representation of designs.

FICPI therefore urges the Board to approach competency assurance as an integrated system: education, supervised experience, registration, post-registration practice, CPE and enforcement should work together to ensure that those who hold themselves out as IP attorneys are competent, accountable and properly equipped to serve the public.

FICPI would be glad to expand on any of the above, in writing or through a verbal consultation.

Yours sincerely

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FICPI Australia

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