

MEMORANDUM OF ASSOCIATION  
OF  
THE AUSTRALIAN ASSOCIATION OF THE INTERNATIONAL FEDERATION OF INTELLECTUAL  
PROPERTY ATTORNEYS

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1. The name of the Association is The Australian Association of the International Federation of Intellectual Property Attorneys which may be abbreviated to FICPI AUSTRALIA.
2. The objects for which the Association is established are:
  - (a) To form a united and representative body of the profession of intellectual property attorneys who are in private practice in Australia for the purpose of promoting improvements in the laws and regulations relating to patents, trade marks, designs and copyrights in Australia and other countries, which body shall be a member of the Fédération Internationale Des Conseils En Propriété Intellectuelle (hereafter referred to as FICPI).
  - (b) To form and establish By-Laws and a Code of Ethics for observance by intellectual property attorneys in Australia in matters appertaining to their professional practice being consistent with those of FICPI.
  - (c) To establish intercommunication between members, and to extend their opportunities and facilities for meeting, and for correspondence, discussion, and interchange of ideas respecting matters connected with their professional practice and generally to aid in the acquisition and dissemination of knowledge appertaining to the profession.
  - (d) To maintain a high standard of rectitude and professional conduct and knowledge.
  - (e) To facilitate contact and communication of the members of the Association with members of FICPI in other countries.
  - (f) To aid in the institution and introduction of practice, procedure and legislation for the benefit and protection of inventors, patentees, traders and manufacturers in Australia and other countries.
  - (g) To raise and obtain moneys by subscriptions, donations, or otherwise for expenditure in accomplishing or furthering the objects of the Association, and to expend such moneys when raised in accomplishing such objects.
  - (h) To do all such other lawful things as are incidental or conducive to the attainment of the abovementioned objects, or any of them.

3. The income and property of the Association shall be applied solely towards the promotion of the objects of the Association, as set forth in this Memorandum of Association, and no part thereof shall be paid, or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever by way of profit to the members.

Provided that nothing herein-contained shall prevent the payment in good faith of remuneration to any officers or servants of the Association, or to any member of the Association, in return for any services actually rendered to the Association, nor for goods supplied in the ordinary and usual way of business nor prevent the payment on money borrowed from any member of the Association of interest at a rate not exceeding the ruling overdraft rate for the time being of the bank of the Association, or reasonable and proper rent for premises demised or let by any member of the Association.

4. The liability of the members of the Association is limited.

5. Every member of the Association undertakes to contribute to the assets of the Association, in the event of the same being wound up during the time that person is member, or within one year afterwards, for payment of the debts and liabilities of the Association contracted before the time at which that person ceases to be a member, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding Two Dollars.

6. If, upon the winding up or dissolution of the Association, there remains, after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the members, but shall be given or transferred to some other Association or Associations having objects similar to the objects of the Association, and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Association by virtue of the provisions of the third paragraph of this Memorandum to be determined by the members of the Association before the time of dissolution or in default thereof by such Judge of the Supreme Court as may have or acquire jurisdiction in the matter.

7. True accounts shall be kept of the sums of money received and expended by the Association, and the matter in respect of which such receipt or expenditure takes place, and of the property credits and liabilities of the Association, and subject to any reasonable restriction as to time and manner of inspecting the same that may be imposed in accordance with the regulations of the Association for the time being, shall be open to the inspection of the members. At the request of any member given in writing to the Secretary the accounts of the Association shall be examined by one or more properly qualified auditor or auditors.

ARTICLES OF ASSOCIATION  
OF  
THE AUSTRALIAN ASSOCIATION OF THE INTERNATIONAL FEDERATION OF INTELLECTUAL  
PROPERTY ATTORNEYS

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1. The Australian Association of the International Federation of Intellectual Property Attorneys is, for the purposes of registration, declared to consist of not more than one thousand (1,000) members.
2. The office of the Association will be situated in such place as the Council determines.
3. The rights and privileges of every member of the Association shall be personal to the member, and shall not be transferable or transmittable by the member's own act or by operation of law.

#### MEMBERS

4. Members shall comprise every person who has been duly elected. Every candidate for election shall be of good repute, and shall be elected as an Ordinary Member, Associate Member, an Emeritus Member or an Honorary Member.

#### ORDINARY MEMBERS

5. Ordinary Members shall comprise every person who was a member of the Association on 30 July 2011 who has not since resigned or been expelled, apart from those persons who on that date were members of the Association based on their Emeritus membership of FICPI and their contribution to the advancement of the Association or its objects. Every new candidate for ordinary membership shall be either:

A. a patent attorney registered in Australia:

- a. whose primary endeavour is as a patent attorney,
- b. who has at least five years experience as a patent attorney since registration as a patent attorney in Australia or overseas, and
- c. who does not practise on behalf of one client, or affiliated group of clients, to the exclusion of other clients;

or

B. a trade marks attorney registered in Australia (not also registered as a patent attorney in Australia):

- a. whose primary endeavour is as a trade marks attorney,

- b. who has at least five years experience as a trade marks attorney since registration as a trade marks attorney in Australia or overseas, and
- c. who does not practise on behalf of one client, or affiliated group of clients, to the exclusion of other clients.

provided however that no trade marks attorney shall be admitted to membership if the result would be either:

- (i) that in the same firm there would be more members of the Association who had been admitted as trade marks attorneys than members of the Association who had been admitted as patent attorneys with an exception being where the trade marks attorney is a sole practitioner or the firm only comprises trade marks attorneys; or
- (ii) that in the Association the number of members that had been admitted as trade marks attorneys would exceed one third of the total membership of the Association.

6. No person shall remain an Ordinary Member if, at any time, that person do not possess the qualifications which governed that person's admission to membership. Council may, in its absolute discretion, suspend or defer the operation of this Article for such time as it thinks fit.

#### EMERITUS MEMBERS

7. Subject to Article 12, Emeritus membership shall be available to any person who is or has previously been a member of the Association and who is an Emeritus Member of FICPI.

#### HONORARY MEMBERS

8. Honorary Members shall comprise every person who was a member of the Association on 30 July 2011 based on Emeritus membership of FICPI and their contribution to the advancement of the Association or its objects who has not since resigned or been expelled. Honorary membership shall otherwise be available to any Ordinary Member who no longer possesses the qualifications which governed their admission to membership or to any Emeritus Member, where such Ordinary Member or Emeritus Member has been recognised by a resolution of Council as having made a substantial contribution to the advancement of the Association or its objects.

#### ASSOCIATE MEMBERS

9. Associate Members shall be non-voting members of the Association. Every new candidate for associate membership shall be either:

- A. a patent attorney registered in Australia:
  - a. whose primary endeavour is as a patent attorney, and
  - b. who does not practise on behalf of one client, or affiliated group of clients, to the exclusion of other clients;

or

- B. a trade marks attorney registered in Australia not also registered as a patent attorney in Australia:
  - a. whose primary endeavour is as a trade marks attorney, and
  - b. who does not practise on behalf of one client, or affiliated group of clients, to the exclusion of other clients.

## ELECTION OF MEMBERS

10. Any person desirous of being elected as an Ordinary Member or an Associate Member of the Association must be proposed in writing. The proposal shall be in the form prescribed by the Council and shall be signed by:

- (i) a proposer being a member of the Association of at least 3 years standing, not being a person who practises as a patent or trade marks attorney in business with the proposer; and
- (ii) the candidate, in which the candidate undertakes to abide by the Articles of Association and By-Laws of the Association.

11. The proposal shall be submitted to the Council, which shall investigate the qualifications of the candidate. If the Council approves of the qualifications of the candidate, the President or Secretary shall be authorised to sign the proposal and, subject to the payment of appropriate fees, the candidate shall thereupon be deemed elected.

12. If the Council does not approve of the qualifications of the candidate, the candidate shall be notified to that effect, and an opportunity given to the candidate to present a case to the Council. The Council shall then reconsider the application and decide accordingly.

13. Any person wishing to be elected as an Emeritus Member of the Association must submit a request in writing to the Council. If the Council approves a request for Emeritus Membership, the candidate shall thereupon be deemed elected as an Emeritus Member, subject to the payment of appropriate fees.

14. Any member may propose in writing to the Council that another member be elected as an Honorary Member. If the Council approves a proposal for Honorary membership, the

candidate shall thereupon be deemed elected as an Honorary Member, and subject to Articles 20 and 21 shall be a member for life without payment of fees, levies or subscriptions.

15. There shall be a Seal of the Association, which shall not be affixed to any document except by order of the Council, and in the presence of two Councillors and the Secretary or a third councillor, who shall attest the affixing thereof.

## REGISTER OF MEMBERS

16. (a) A Register of members shall be kept under the charge of the Secretary or otherwise as the Council may direct, and in this Register shall be entered the full names and addresses of all members, together with the dates of their admission into the Association, their categories of membership of both FICPI and the Association, and such other particulars as the Council may determine.

(b) When any person who was a member ceases to be a member the date upon which that person ceased to be a member shall be entered in the Register.

17. The Council shall prescribe the entrance fees and subscriptions payable by Ordinary Members, Emeritus Members and Associate Members and the time at which and the manner in which such fees and subscriptions shall be paid.

18. Any member whose subscription is in arrears for more than three months shall not be entitled to any privileges of membership.

19. (a) The Council may, in order to provide funds for any contingency which, in the opinion of Council, cannot be met out of the regular funds or income of the Association, impose a levy upon members or upon any class of members other than Honorary Members.

(b) Where, in the opinion of Council, the special nature or circumstances of any levy make it reasonable to do so, Council may direct that any levy or any part of any levy is not applicable to any member.

20. (a) Any entrance fee or subscription prescribed or any levy imposed shall be announced by circulation to all members and may be disallowed in whole or in part at a Special Meeting of members called for that purpose within three months of its announcement.

(b) Any entrance fees, subscriptions or levies which are disallowed and which are paid shall be refunded to the extent to which they are disallowed in whole or in part.

## SUSPENSION, EXPULSION, RESIGNATION AND REINSTATEMENT OF MEMBERS

21. (a) The Council may by resolution suspend any member from the exercise of all rights and privileges of a member during such period as may be thought fit (not extending beyond the commencement of the next Special General Meeting) for any cause which shall in its opinion render such suspension necessary or expedient, provided that at least five Councillors shall be personally present at the meeting at which the suspension shall be resolved upon and provided further that such resolution shall be carried on the affirmative personal votes of at least four councillors or of at least three-fourths of councillors personally present at the meeting, whichever is the greater.
- (b) No member shall be suspended unless the member has first been advised in writing by Council of the grounds upon which the member's suspension is proposed and has been afforded a period of not less than fourteen days to show cause, either personally or in writing, why the member should not be suspended.
22. (a) If it shall appear to the Council or shall be represented to the Council by a requisition in writing signed by three or more members, that there is reason to believe that any member has been guilty of conduct unworthy of a member or conduct which, in the absence of satisfactory explanation, would render that member unfit to remain a member, or that any member has committed a breach of any By-Law, the Council may send to that member a statement in writing of the conduct imputed to that member, and shall afford that member an opportunity of giving an explanation in writing or in person as that member may elect.
- (b) If on the consideration of such explanation or in the absence of any explanation the Council shall be of the opinion that the member ought to be expelled from the Association, such opinion shall be stated in the form of a report to be laid before a General Meeting, and the member shall be liable by resolution of such meeting to be expelled from the Association, and if such resolution be passed, the member shall thereupon cease to be a member thereof.
- (c) The Council may in its discretion suspend from the exercise of all rights and privileges of membership, during such period as may be thought fit, not extending beyond the date when the member shall obtain a Certificate of Discharge, any member whose estate shall have been sequestrated under the Bankruptcy Act for the time being in force.
- (d) The Council may in its discretion terminate the membership of any member who does not actively practise or otherwise no longer possesses the qualifications which govern admission to membership.
- (e) The Council may in its discretion reinstate to membership any member whose membership has been terminated under above paragraph (d).

Provided that the discretionary power of the Council under paragraphs (d) and (e) hereof shall only be exercised at a meeting of the Council where at least five councillors shall be personally present and termination of membership or reinstatement of membership as the case may be, is resolved upon the affirmative personal votes of at least four councillors or of at least three-fourths of the councillors personally present at such meetings, whichever shall be the greater.

23. Upon giving to the Council two calendar month's notice in writing any member having made all payments to the Association which shall have become due, may resign from the Association.

24. If any member shall be in arrears in a subscription or levy for three months, and shall fail to pay the arrears within three months after notice has been sent to the member by the Secretary, the membership of that member may be terminated by the Council at any time afterwards, and the former member shall cease to have any rights as a member of the Association; but shall nevertheless continue to be liable to pay the arrears in subscription or levy due at the time of the membership was terminated; provided always that this Article shall not be construed to compel the Council to terminate any membership if it considers that the membership ought not to be terminated.

25. A person who has ceased to be a member may again become a member, either without special conditions, or subject to such special conditions as the Council may determine, and such special conditions may relate to the payment of past subscriptions or the doing of any act which the Council may determine such person should pay or do, provided that such act shall concern only the conduct or business of the person as a member or the member's relations with the Association.

## MEETINGS OF THE ASSOCIATION

26. General Meetings of the Association shall be held at such time and place as the Council may determine provided that a General Meeting (or Special General Meeting) shall be held at least once in each calendar year.

27. (a) Notices of every General Meeting or Special General Meeting stating the date and place of such meeting shall be sent to every member of the Association at least thirty (30) days prior to the date fixed for such meeting, and notices specifying the business to be transacted at such meeting, as well as the date and place thereof, shall be sent to all such members at least fourteen (14) days prior to such date and no business which has not been stated in the notice of business so sent shall be transacted at any such meeting; but the non-receipt by any member of notice of such meeting so sent to the member shall not invalidate the proceedings of such meeting.

(b) A notice of General or Special General Meeting may specify the availability of technology that gives the members a reasonable opportunity to participate by means of telephone, videoconference or other audio-visual communication means. Any member attending a General or Special General Meeting by such technological means shall be



considered as being personally present. Failure of the technology does not constitute grounds for cancelling or postponing the meeting and shall not invalidate the proceedings of such a meeting unless it results in the meeting lacking a quorum as determined by the Chairperson at the commencement of the meeting.

(c) A notice of General or Special General Meeting may provide that a vote or ballot that would otherwise occur at a General or Special General Meeting may take place by one of the following means, being a means which complements the conduct of a vote or ballot in person or by proxy at a General or Special General Meeting:

(i) a postal vote or ballot; or

(ii) an electronic vote or online ballot system, whether operated by the Association or by an external service provider chosen by Council, which allows members to vote or cast ballot preferences electronically, in each case to be conducted before or during that General or Special General Meeting, or any postponement thereof.

(d) Votes may be given either personally or by proxy, as hereinafter mentioned. In the case of a General or Special General Meeting for which a postal vote or ballot or an electronic or online voting system has been organised in advance of the General or Special General Meeting, votes or the casting of ballot preferences may be made personally, by postal vote or postal ballot, or by electronic or online means as described in the Articles.

28. (a) There shall be a Special General Meeting held within the preceding or following 12 months of a World Congress of FICPI. At least two (2) months prior to the date of the Special General Meeting, notice shall be given to all members of the date and place of such meeting and calling for nominations for the positions of President, Secretary and ordinary councillors.

(b) The business of the Special General Meeting shall be to receive and deliberate upon the report of the Council on the state of the Association including a statement of accounts, and to elect the President and Secretary and to fill the vacancies on the Council until the next Special General Meeting.

29. (a) All nominations for the positions of President, Secretary and ordinary councillors shall be received by the Secretary at least thirty (30) days prior to the date of the Special General Meeting.

(b) In the event of no nominations for a position or positions being received, then the Council shall nominate such persons as it deems fit to fill the vacancy or vacancies.

(c) Nominations must indicate the position or positions in respect of which the candidate is nominated and must be signed by at least two members and by the nominee or their agent.

(d) Subject to the operation of the next succeeding sub-section, should the candidate or candidates nominated for any position or positions be not more in number than the vacancies for that position or positions, the Chairperson of the Special General Meeting shall declare the person or persons so nominated to be elected to that position or those positions.

(e) In the event of the number of nominations being in excess of the vacancy or one or more of the vacancies a secret ballot shall be held and the Secretary shall forward to each member entitled to vote a ballot paper, which ballot paper shall indicate the names of all of the candidates and the position or positions for which each candidate has been nominated with the exception that any person who is eligible to be declared elected to the most senior position for which that person has nominated under the provisions of the last preceding sub-section shall not be listed as a candidate for an election under this sub-section.

(f) In voting each voter shall indicate by number, commencing with the number 1 for the first preference and proceeding in numerical order, the order of preference for all of the candidates in respect of the position or each of the positions vacant. Votes, if any, for the position of President shall be counted first, followed by votes, if any, for the position of Secretary, followed by the votes for the positions of ordinary councillors.

Candidates found to be elected to a position shall thereupon be eliminated from the counting of votes for other positions.

(g) In an election, if any, for President or Secretary, one vote shall be accorded to each candidate receiving the first preference of a voter for that position. The candidate receiving the highest number of votes shall be considered to be duly elected.

In an election for the position of an ordinary councillor one vote shall be accorded to each candidate receiving one of the first to the sixth preferences, inclusive, of a voter for that position. In the event that a candidate receiving one of the first to sixth preferences, inclusive, of a voter for the position of ordinary councillor has already been duly elected President or Secretary the candidates receiving that voter's sixth highest remaining preferences shall each be accorded a vote. The candidates receiving the highest to the sixth highest number of votes shall be considered to be duly elected.

In the event that a voter fails to assign a preference to all of the candidates for any one position their ballot paper in respect of that position shall be informal and shall be rejected by the scrutineers.

(h) If in a ballot for any of the positions of President or Secretary or ordinary councillor an equal number of votes is obtained by two or more candidates for the one position then the candidate having the highest number of preferences of the highest order of preference for which the preferences directed to those candidates are unequal

shall be considered to be duly elected. In the event that the candidates, or two of them, have an absolute equality of preferences the candidate to assume the office shall be decided by lot.

30. Prior to the commencement of balloting for the President, Secretary and ordinary councillors, the meeting shall choose two or more competent members as scrutineers, who shall receive the votes. The ballot shall remain open for one half hour.

#### PROCEEDINGS AT MEETINGS

31. All members are entitled to be present at every General Meeting or Special General Meeting.

32. Ten members entitled to vote personally present shall constitute a quorum for the purpose of any General Meeting or Special General Meeting.

33. If within thirty minutes after the time fixed for holding any meeting a quorum be not present the meeting shall be adjourned by the Chairperson.

34. The President shall be Chairperson at every meeting, and in the absence of the President a councillor shall take the chair; and if no councillor be present, or, if present, be unwilling to take the chair, the meeting shall elect a Chairperson who is a member entitled to vote.

35. Members entitled to vote may be represented by proxy, provided that the proxy appointed be a member entitled to vote, and no one member shall hold more than three proxies except the President and Secretary, who may represent by proxy any number of members. Members represented by proxy shall be considered as being present.

36. Votes may be given either personally or by proxy, as hereinafter mentioned.

37. (a) The instrument appointing a proxy shall be deposited with the Secretary before the time of commencement of the meeting at which the person named in the instrument proposes to vote, but no instrument appointing a proxy shall be valid except for the meeting for which the same shall have been granted, or any adjournment of such meeting.

(b) Where a meeting is adjourned whether or not to another place any member whether represented at the meeting by a proxy or not may appoint a proxy or substitute a previous proxy for the resumption of the meeting and such proxy or substitute proxy shall be lodged with the Secretary prior to the time for the resumption of the meeting.

38. Any member whose subscription is in arrears shall not be entitled to vote at any meeting of the Association.

39. Any decision of any meeting shall be ascertained by a vote of members present at the and entitled to vote. Each member entitled to vote shall have one vote on each question and no more. In case of equality of votes, the Chairperson shall have a second or casting vote.

40. The acceptance or rejection of votes at any meeting by the Chairperson shall be conclusive for the purpose of the decision of the matter in respect of which the votes are tendered, provided that the Chairperson may review a decision at the same meeting if any error be then pointed out to him.

41. Resolutions passed at a General Meeting or Special General Meeting concerning alterations either to the Articles or By-Laws, or the direction or management of the affairs of the Association, shall only be effective provided they are carried on the affirmative votes of at least three-fourths (3/4) of the members voting, and provided always that at least one-half (1/2) of the members on the roll of the Association and entitled to vote, shall vote either personally or by proxy or in the case of postal vote or an electronic or online voting means , by a personal postal vote or a personal electronic or online vote

## COUNCIL AND OFFICERS

42. The affairs of the Association shall be managed by a Council. The Council shall be elected from members, other than Associate Members, and shall consist of one President, one Secretary, up to six ordinary councillors and the Immediate Past President, who together form the Council of the Association and each of whom are a councillor of the Association.

43. The President and Secretary of the Association shall be respectively President and Secretary of the Council.

44. A councillor desirous of resigning from office, may send a resignation in writing to the Council, and on the acceptance of such resignation by the Council, but not before, the office of that councillor shall become vacant.

45. The Council may fill by appointment an extraordinary or casual vacancy in the Council (including any casual vacancy in the office of President or Secretary).

## THE FUNDS OF THE ASSOCIATION

46. (a) All moneys belonging to the Association shall be deposited by the Council in a bank or banks selected by it on account and for the use of the Association, or otherwise invested and may be drawn upon as and when required under the direction of the Council.

(b) All money paid or payable on account of the Association shall be approved by the Council. The Council may authorise the Secretary to attend to payment of expenses incurred in and deemed by Council to be routine day-to-day operations of the Association and such payments may be made in advance of approval of the Council.

## THE SECRETARY

47. (a) Subject to Article 47(b) hereof, it shall be the duty of the Secretary, under the direction of the Council, to conduct the correspondence of the Association; to take minutes of the proceedings of meetings of the Association and Council; to read the minutes of the preceding meeting and all communications that may be ordered to be read by him; to superintend the publication of such papers, journal or other publication, as the Council may direct; to maintain a Register of members and keep the Secretary General of FICPI informed thereof; to direct the collection of the subscriptions and the preparation of the accounts of the expenditure of the funds; and to present all accounts to the Council for inspection and approval; and to generally conduct the ordinary business of the Association.

(b) At the option of the Council, the Council may appoint a Treasurer from amongst the councillors whose duty it shall be, instead of the Secretary's, to direct the collection of the subscriptions and the preparation of the accounts of the expenditure of the funds, and to present all accounts to the Council for inspection and approval.

## POWERS AND PROCEDURE FOR COUNCIL

48. The Council shall meet as often as the business of the Association may require and may regulate its own mode of procedure. Four councillors personally present (whether physically present or by telephone, videoconference or audio-visual communication means) shall form a quorum. Councillors absent from a meeting of the Council may be represented by an alternate councillor who is also a councillor. An alternate councillor shall be appointed by notice in writing signed by the absent councillor and such notice shall be produced at the meeting for which the appointment is intended. An alternate councillor may exercise, in addition to the alternate councillor's own vote, the vote of the absent councillor. The Council may appoint Committees for special purposes to report to the Council.

49. All questions, unless otherwise specially provided, shall be decided in the Council by vote, but at the desire expressed by any two councillors present, the determination of any subject shall be postponed to the succeeding meeting, but there shall be no further postponement of such determination unless the Council otherwise decides.

50. A Statement of the Funds of the Association and of the Income and Expenditure during the past year terminating on the 31st December shall be made under the direction of the Council.

51. The Council shall present a report to each General Meeting.

52. The Council shall appoint from its numbers a Delegate and a Sub-Delegate to represent the Association on the Executive Committee of FICPI and to attend meetings of the Executive Committee. The Delegate and in the absence of the Delegate the Sub-Delegate shall be authorized to speak on behalf of the Association and to vote in accordance with directions given by Council. Such appointments may be terminated by Council at any time and shall terminate at the time of a Special General Meeting.

53. No act done by the Council, whether *ultra vires* or not, which shall receive the sanction of the members of the Association in General Meeting, shall be afterwards impeached by any member of the Association on any ground whatsoever, but shall be deemed to be an act of the Association.

#### BY-LAWS AND CODE OF ETHICS

54. (a) The Council shall except as hereinafter provided require the observance by all members of the By-Laws appended hereto and of the Code of Ethics and of all such By-Laws and the Code of Ethics consistent with the Memorandum and Articles of Association as from time to time may be in force.

(b) The Council may, after taking Counsel's advice with respect thereto, suspend the operation of any By-Law or any part of the Code of Ethics if in the opinion of Counsel such By-Law or part of the Code of Ethics or the observance of such By-Law or part of the Code of Ethics is contrary to any law in force in Australia. The Council shall promptly notify all members of such suspension.

55. The Council shall publish a Code of Ethics setting forth required standards and practices with respect to the professional practice of a patent attorney and with respect to the conduct of members in their relationship with their clients, associates, the public and other practitioners or with government departments or with members of other professions. Council shall also publish Guidelines under the Code of Ethics to assist members in the interpretation of the Code of Ethics. Council may from time to time amend the Code of Ethics and the Guidelines subject to any amendment being ratified at the next General Meeting or Special General Meeting of the Association.

BY-LAWS  
OF  
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1. No member shall behave in a manner contrary to that defined in the Code of Ethics and any such contrary behaviour shall be deemed to be conduct unworthy of a member of the Association.
2. No member shall, except through the Bureau of FICPI or the Council of the Association, approach a Minister, officers of IP Australia, any other government department or International Authority or Body concerning any legislation or regulations relating to industrial or intellectual property or to the practice thereunder or as to any amendment thereof unless it is made clear that such approach is not in their capacity as a member of the Association.
3. No member in practice as a patent attorney as a partner or principal in an arrangement with one or more other partners or principals that are not members shall use any word, letters or symbols which in any way suggest or indicate that all the partners or principals are members of FICPI.

CODE OF ETHICS  
OF  
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**PART 1: PRELIMINARY**

The Memorandum of Association of the Australian Association of the International Federation of Intellectual Property Attorneys includes as an object **“to maintain a high standard of rectitude and professional conduct and knowledge”**.

It is the object of this Code to broadly define the rules of professional conduct applicable in Australia, which members are obliged to observe in the practice of their profession. The Code should be read in conjunction with the “Code of Ethics Guidelines” which follow this Code and which more specifically set forth desirable standard of conduct to assist members in the interpretation of this Code.

**PART 2: DEFINITIONS**

The following words and phrases shall, unless the context clearly indicates the contrary, have the following meanings:

<b>ASSOCIATION</b>	- Australian Association of the International Federation of Intellectual Property Attorneys
<b>FICPI</b>	- Fédération Internationale Des Conseils en Propriété Intellectuelle
<b>MEMBER</b>	- a person who is a member of the Association,
<b>COUNCIL</b>	- the Council of the Association.
<b>INTELLECTUAL PROPERTY</b>	- all matters relating to patents, designs, trade marks, copyright, and allied matters, and without affecting the generality of the foregoing shall include the filing of applications in respect thereof, the prosecution of such applications, the maintenance of rights granted thereon, the preparation and registration of licenses and assignments thereof; advice, searches and litigation in connection therewith.



<b>CLIENT</b>	- any person, firm, body corporate or body politic, whether in Australia or overseas, on whose behalf a member has received instructions, has given advice or has had professional contact in connection with a matter relating to intellectual property, and includes overseas patent attorneys, patent agents, trade mark agents, solicitors, lawyers and their clients.
<b>PROFESSIONAL BODY</b>	- the Association, The Institute of Patent and Trade Mark Attorneys of Australia or any Foreign Institute of patent or trade marks attorneys, or a foreign equivalent thereof, membership of which is substantially limited to persons involved in the field of intellectual property; or any other body recognised from time to time as a professional body by the Council.
<b>PROFESSIONAL PRACTICE</b>	- any practice in which advice is provided or services are performed in connection with intellectual property.
<b>LAY BODY</b>	- any body which is not a professional body as hereinbefore defined.
<b>PROFESSIONAL JOURNAL</b>	- any journal or publication published by or under the auspices of a professional body, or any other journal or publication recognised from time to time as a professional journal by the Council.
<b>LAY JOURNAL</b>	- any journal or publication which is not a professional journal as hereinbefore defined.
<b>THE PROFESSION</b>	- the profession of a patent attorney.
<b>CODE</b>	- this Code of Ethics.
<b>GUIDELINES</b>	- the Code of Ethics Guidelines appended to this Code

## PROFESSIONAL CONDUCT

Members shall conform with and act within the Statutes and Regulations of FICPI, as they may be amended or modified from time to time.

Without limiting the generality of the foregoing Council has issued this Code for the direction of members in the practice of their profession, and a member is expected to act within the spirit as well as the letter of the various matters set out herein. Where any matter herein specified is in conflict with the Statutes and Regulations of FICPI, the Statutes and Regulations of FICPI shall prevail.

- 3.1 Members must give priority in their professional conduct to act
  - (a) within the law
  - (b) in the best interests of their clients
  - (c) in the public interest, and
  - (d) in the interest of the profession as a whole,in that order.
- 3.2 It is the duty of a member to maintain professional and ethical standards in the practice of their profession, to promote the interests of their clients and of the profession, and, in the practice of their profession to render a service to the public. A member should refrain from doing any act or sanctioning any act which is undignified or is likely to bring discredit upon, or otherwise prejudice the public confidence in, the profession, the Association, FICPI, or any of its members.
- 3.3 A member shall uphold the public reputation of the Association and of its members and shall at all times give adequate care and attention to apply the necessary expertise to work entrusted to the member by clients.
- 3.4 A member shall practise their profession conscientiously and in a manner appropriate to its dignity and shall refrain in correspondence or otherwise from using insulting or provocative language.
- 3.5 A member shall at all times maintain professional standards when dealing with Government officials (e.g. with officials at the Australian Industrial Property Organisation, and other Government Departments), and shall refrain in correspondence and otherwise from using insulting or provocative language and from making false or misleading statements. A member shall not do anything which could place other members at any disadvantage through any personal relationship with any official.

- 3.6 A member shall in the practice of their profession take care to avoid behaviour and practices that are misleading or deceptive or that are likely to mislead or deceive.
- 3.7 A member shall at all times extend courtesy to the public and other members of FICPI.
- 3.8 A member shall take all reasonable steps to avoid situations in which the member's duty to one client is in conflict with that to another client, and whenever any such conflict becomes apparent, the member shall take steps calculated to resolve it and to avoid prejudice to either client.
- 3.9 At all times a member in the practice of the member's profession must exercise the member's professional duties in complete independence of other interests and associations which the member may have, so that the exercise of those duties is not improperly influenced by such interests and associations.
- 3.10 A member shall not acquire or be associated with the acquisition of any intellectual property rights, or substantial interest therein, in such circumstances as would give or be likely to give rise to a conflict between professional duty and self-interest.
- 3.11 Competition between members shall be fair.
- 3.12 A member may advertise in connection with the member's professional practice provided the advertising:
- (i) Is not false;
  - (ii) Is not misleading or deceptive or likely to mislead or deceive;
  - (iii) Consistent with the Statutes and Regulations of FICPI;

Notwithstanding the above, if in the opinion of the Council an advertisement is undesirable, unprofessional, or likely to bring the profession into disrepute, the Council may request the member to cease or amend such advertising, unless such a request would have the effect of inhibiting informative promotion by members.

- 3.13 (a) Subject to sub-paragraphs (b) and (c), a member shall be accountable to the Council for acts and defaults of the following persons not being members of the Association.
- (i) Any solicitor, patent attorney or trade marks attorney practising in the same firm as the member;
  - (ii) Any solicitor, patent attorney or trade marks attorney practising in a firm or company associated with and under the direct, or indirect, effective control of the member or of the firm of the member;
  - (iii) Any person included in the staff of the member;

- (iv) A person included in the staff of a firm or company which is directly or indirectly controlled by the member or by the firm of the member.
  - (b) Sub-Paragraph (a) does not apply to acts or defaults not relating to intellectual property or to acts and defaults of persons over whom the member has no direct or indirect control.
  - (c) For the purposes of sub-paragraph 3.13. (a) (iv) a firm or company shall be deemed to be under the direct or indirect control of the member or of the firm of the member if control is exercised by the member through at least one person in the family of the member or through a trust of which at least one person having membership to the trust is a person in the family of the member.
- 3.14 A member shall ensure that the member's practice as a patent attorney has Professional Indemnity Insurance cover and/or available assets adequately to protect the interests of clients of the practice.
- 3.15 Every member shall be deemed to be aware of the contents of this Code and may not plead ignorance of it.
- 3.16 A breach of this Code cannot be justified by referring to instructions from a client.

### **PART 3: COMPLAINTS**

A complaint regarding the conduct of a member shall be submitted to the Secretary who shall refer the complaint to Council. A member who is called upon by Council to provide information relating to a complaint shall fully, honestly and promptly respond to any such call unless the response may tend to prove that the member has committed an offence against a law of the Commonwealth or of a State or Territory. Council may refer any complaint to the Deontology Commission of FICPI for advice, opinion and/or direction and shall do so where it believes the conduct of a member may be contrary to the statutes or By-laws of FICPI.

### **PART 4: MISCELLANEOUS**

5.1 Any member may ask Council for guidance as to whether -

- (a) any conduct in which the member or their firm engages or proposes to engage, or
- (b) any publication which the member or their firm uses, publishes or proposes to use or publish,

complies with this Code, and the Council shall advise the member.

Advice or guidance given under this paragraph shall not be binding on Council, but where a member proceeds in accordance with such advice or guidance, the conduct or publication shall not be held in breach of the Code unless the member has been advised by Council that the conduct or publication no longer complies with the Code.

## CODE OF ETHICS GUIDELINES

(The sub-headings referring to the various parts of the Code are for general guidance only).

### PARTS 3.3 TO 3.5

- 1(a) At any office at which professional advice is being provided to the public or specifications or other documents are prepared for the purpose of the Patents Act, Trade marks Act or Designs Act, a registered patent attorney entitled to practice under the Patents Act or registered intellectual property practitioner entitled under the Patents Act to provide relevant professional advice to the public will be in continuous charge of such office and will normally be in attendance at any office when such professional advice or documents are being provided or prepared.
- (b) All professional work as a registered patent attorney undertaken in the name of or by a member or in the name of a firm of patent attorneys of which a member is a principal shall be actively supervised by a registered patent attorney or an appropriately qualified industrial property practitioner. The drafting or amending of patent specifications shall be supervised by a registered patent attorney.
2. A member shall at all times apply the member's utmost skill and diligence in the handling of matters on behalf of the member's clients and associates and shall, on becoming aware of any error, omission or defect in the handling of any matter in the member's care, take all possible steps which are reasonable in the circumstances of the case to rectify the error, omission or defect. A member shall keep clients informed of the status of any matter in the member's care.
3. In the event that a member ceases permanently or temporarily to practice by reason of retirement, incapacity, bankruptcy or any other reason, the member shall take all reasonable steps to avoid or minimise inconvenience to the member's clients as a result thereof, and the member shall be especially vigilant to ensure that no statutory period is permitted to expire without necessary action being taken to safeguard the interests of the member's clients.
4. A member shall at all times be candid with their client as to the advisability or otherwise of making searches prior to the filing of patent, trade mark or design applications, and as to the financial implications of proposed courses of action.
5. A member who is unwilling to accept a call upon the member's professional services or who withdraws their services shall forthwith inform the potential or existing client and shall, where the member withdraws, take reasonable action to inform the client of the immediate steps required to preserve the client's rights.
6. A member shall not improperly use or disclose confidential information which has been derived from or obtained on behalf of any client (including a former client or a prospective client), or any other member, unless the member is released from their

obligation not to disclose such information. A member is automatically released from the member's obligation not to disclose information received in confidence if said information becomes published.

7. A member shall not attempt improperly to obtain from another member information relating to a client of such other member.
8. A member shall not make improper use or disclosure of information derived from or obtained from any official on behalf of a client or prospective client or on their own behalf.
9. A member shall be entitled to accept unsolicited instructions from a client even though he is aware that such client has previously been the client of another member; but a member shall not knowingly take instructions on a matter from a client of another member, in connection with which the other member has already acted, without ensuring that other member is aware thereof, unless circumstances of the case require that the other member should not be informed (for example, where a further opinion has been requested).
- 10(a) A member representing a party in any matter in regard to which another member has received instructions from another party (whether to institute, threaten, or defend proceedings, or otherwise) shall not approach such other party knowing him/her to be a client of the other member except with the consent of such other member.
- (b) Where a member or the firm of a member is listed as the address for service (or agent for renewals) against an application or registration and receives correspondence from another party with a view to assisting the other party by way of obtaining a letter of consent or cancellation of a trade mark or any other matter, it is expected that the member be prepared to conduct initial contact correspondence with the client and the other party and either bill the client or raise no charge. If the member intends to charge the party initiating the correspondence, this should be advised in response to the initial contact. However, such advice should only indicate that a bill will be raised if the matter progresses beyond an exchange of two or three communications from each side.
11. Where a member is instructed by a client to take over the handling of a case from another member, the member shall ensure, unless the instructions to the member are to the contrary, that the other member is made aware of the first mentioned instructions.

The other member is obliged without delay to loan or transfer all documents necessary for the handling of the case or provide copies thereof at reasonable expense, but such obligation shall not override any lien the other member may have over such files.

12. Unless a member has instructions to the contrary, a member shall endeavour to provide another party with warning of an intended objection to an extension of time or the like sought by that other party.

13. If, in any circular, advertisement or otherwise a member makes comparisons with other members, the member shall not refer invidiously to the qualifications or to the professional practice, conduct, or status of any other member.

### **PART 3.7**

14. In professional practice, a member shall not knowingly make a false or misleading statement, or prepare or be a party to the preparation or lodgement of documents in relation to the grant of intellectual property rights which contain any such statement, nor shall a member wilfully misrepresent facts or otherwise mislead another member, a client or any other person or organisation, in any matter with which the member is concerned.
15. A member shall not make any representation or indication at the member's office, premises or on stationery, brochures, newsletters or the like, which is misleading or is likely to mislead the public.
16. In the event that a member carries on practice in Australia as a patent attorney under the member's name and under one or more business names, or under more than one business name, then any letterheaded stationery used by the member in the member's practice as a patent attorney under any one of those names shall also refer to the member's practice under the other name or names.

### **PART 3.9**

- 17(a) Once a member or a firm, in respect of which, at the relevant time, the member was a principal or was associated, has acted for a client in any matter the member should never act for a person with a different or contrary interest or an adversary in the same matter, or lend such person or adversary any aid, counsel, or assistance in that matter or in any other matter where the member's knowledge of that client's affairs could prejudice the client or provide any unfair advantage to such person or adversary, provided however, that where the member's knowledge of that client's affairs would not prejudice the client or provide any unfair advantage to such person or adversary, the member may act for such person or adversary upon a specific release being given by that client.
- (b) Where the member or the firm referred to in Guideline 17(a), has acted for a number of persons jointly and there is a dispute between those for whom the member or firm has acted, any one or any subset of those for whom the member or firm has acted is considered a person with a different or contrary interest or an adversary for the purposes of Guideline 17(a).
18. A member may and should accept the instructions of a client to file an application which may lead to conflicting rights, under circumstances where the member considers that failure to do so may result in prejudice to such client but shall as soon as practicable advise the client of the conflict.



### **PART 3.11**

19. A member shall not undertake work for a client if the member is the owner of an intellectual property right or of a substantial interest therein, and if the circumstances are such as might give rise to a conflict between professional duty and self-interest, unless the member before undertaking the work fully discloses to the client the member's ownership or interest and obtains written consent.

### **PART 3.13**

- 20(a) Unless an agreement to the contrary is in force with a person with whom costs are to be incurred, a member is responsible for all costs incurred on behalf of a client, even if the member is unable to obtain payment from the client.
- (b) All such costs shall be paid in a timely manner and the non-payment by the client shall not be an acceptable excuse for a late payment or non-payment.
- (c) Without limiting the generality of the foregoing a member shall pay according to the normal credit terms of the Associate any fees and charges properly rendered by an Associate Practitioner in another country, whether or not the member has been paid by that client.
- (d) The costs referred to in paragraphs (a) and (b) herein do not include costs awarded against a client in proceedings before the Courts, Registrar of Trade Marks, Commissioner of Patents, Registrar of Designs or other Tribunal.
21. A member shall always consider the possibility of negotiating a settlement of a matter and shall not encourage a client to continue with a particular course of action where settlement would, on balance, be in the interests of the client.