



**President's Report
Brisbane, Australia
FICPI Australia Annual General Meeting
Saturday 20 August 2022**

This is my first report to a FICPI Australia Annual General Meeting as President of FICPI Australia, and I am honoured to do so.

It has been some ten months since the Special General Meeting in 2021 when I became President, and the FICPI Australia Council and the Patent and Trade Mark attorney profession have generally been very busy.

It is appropriate at this time that I thank our immediate past President Stephen Krouzecky, for his past and continuing efforts to assist FICPI Australia Council and various FICPI International Committees.

It is also appropriate for me to thank current FICPI Australia Council members for their willingness to be part of the Council and to take on the many responsibilities that add to their hectic professional and personal lives. In particular Rohan Wallace our Secretary deserves special mention for taking on an onerous workload with aplomb.

This report has two purposes.

The first is to report on the activities of the FICPI Australia and the second is an opportunity to express my vision for FICPI Australia.

Concerning the latter purpose, I hope that what I express today will become a basis for inspiring FICPI Australia members to adopt that vision, and encourage members and Council members to share that vision and act to implement and engage with that vision.

Activities of FICPI Australia

I first provide a summary of the activities of the FICPI Australia. Without the skill, passion and dedication of Council members, all of whom I am privileged to work with, none of the following activities would have been possible.

FICPI Australia submissions

The following submissions have been made:

Designs (Formal Requirements for Designs Documents)
Instrument 2022

Consultation on IT3 Proposals for substantive Patent Law Harmonization (Prior Art, Conflicting Applications, Grace Period, Prior User Rights Defence, Defence of Intervening User, Mandatory Publication)

Trans-Tasman IP Attorney Board Regulation Reform Public Consultation

FICPI Australia Council activities beyond submissions

The following actions of the various FICPI Australia Council sub-committees and some members have added to the fabric of FICPI Australia and FICPI International

- Created and administered a FICPI Australia LinkedIn presence
- Late Friday Afternoon Virtual Gathering approximately every three months
- Created content for and learnt to administer the FICPI International supplied FICPI Australia webpages, which will be live before the World Forum in Cannes, France, in late September and which can be viewed at www.au.ficpi.org
- Provided a webinar on Client Privilege very capably chaired by Susan Hantos, which was repackaged and presented as a webinar under the AIPPI umbrella with contributions from luminaries within the international profession
- Issued two Newsletters to FICPI Australia members
- Conducted a number of surveys seeking the views of FICPI Australia members
- Consulted FICPI Australia members and selected FICPI International members, created and submitted Amicus Curiae to the High Court of Australia in the Aristocrat v Commissioner of Patents Appeal with the financial assistance of FICPI International. We know the decision was handed down on Wednesday, 17 August 2022. As of the

time of writing this report, the decision was yet to be delivered. I hoped that some clarity would be provided to the vexed question of the manner of manufacture issue when dealing with an invention that includes the use of a computer. If the decision proscribes unworkable new court-created law, I anticipate a new activity for FICPI Australia in the coming years involving lobbying for sensible interim IP Australia Examination guidelines and possible legislative change.

FICPI Australia and IP Australia

The Director General of IP Australia, Michael Schwager, has been very generous with his time. At his invitation Rohan Wallace and I had our very first meeting with him in June of this year. Further meetings have already been scheduled at three-month intervals. During our first meeting, we were encouraged to bring to the table the considered views of our membership about the working relationship those members have with IP Australia. If you can imagine an informal chat on a Friday afternoon, we did not feel restrained about discussing sensitive topics or having a frank exchange of views. Rohan and I urge you to make us aware of any IP Australia practices or policy issues of concern to you. We will consider how best to communicate those concerns to the Director General of IP Australia as well as through the consultation committees and our growing list of contacts within IP Australia.

Various members are encouraged and welcome to participate in the various Committees that IP Australia facilitates. Those committees include the Patents Consultation Group (PCG), the Trade Marks and Design Consultation Group (TMDCG); the IP Inclusive initiatives; and various other ad hoc committees which are formed to address specific policy and operational issues that arise during the year. The final Stakeholders Consultation Group Meeting was, in fact, my first attendance but I can see that the issues covered by that group have been consumed by other Groups.

Rest assured that IP Australia hears the profession. I continue to urge all FICPI Australia members to participate in discussion with IP Australia with a genuine and professional approach. There are ample opportunities to express the views of FICPI Australia and draw on, when appropriate, the vast knowledge and experience of FICPI Australia members and those of FICPI International committees, as well as the numerous motions passed by the FICPI

Executive Committee. We have great things to say and a willing recipient in IP Australia of those views.

Membership Numbers

Due in part to past efforts and the more recent activities of FICPI Australia and FICPI International (particularly the World Congress, which has spurred interest in FICPI membership), member numbers have generally risen since the end of 2020 despite some resignations due mainly to retirements from the profession. The number of members as of December 2019 was 64 ordinary members and 5 Emeritus members; as of December 2020, there were 53 ordinary members and 5 Emeritus members; as of December 2021, there were 51 ordinary members and 5 Emeritus members; and as of today, there are 55 ordinary members and 5 Emeritus members.

There are two attorneys working their way through the membership process at this time. Retirements from the profession have and will continue to reduce our membership numbers.

I urge all FICPI Australia members to actively encourage trusted and competent attorneys to review the benefits of membership, more about which I will talk to later in this report.

My Vision

Background

I believe that FICPI Australia is, first and foremost, an association of like-minded practising attorneys in private practice who wish to provide the best possible service to their clients. Thus, they join FICPI Australia to learn how to achieve that very fundamental aim.

A concrete benefit of membership is the **improvement** that we can all create for us, our firm, and our clients, which comes from knowing that FICPI members here in Australia and most countries in the World who are skilled and respected members of their profession. FICPI members can be relied upon to handle their client's matters with the utmost care and professional skill. FICPI members can have confidence that if they need the services of an associate in an unfamiliar IP system, the FICPI International register of members will provide an attorney they can rely on to provide the same level of service we provide our own clients. However, there are undisputed business development opportunities which are a basis for the creation of strong personal relationships. Those relationships can develop into fellowship.

Indeed those opportunities to create connections can be a life-long benefit of membership for those willing to connect at more than just a professional level with like-minded people from all over the World.

Yet related feature of self **improvement** is that membership of FICPI Australia, which supported my desire to become a FICPI Australia member, was the very collegial and friendly discussions I was able to have with FICPI members regardless of the status they had in their firm or within the attorney profession. Malcolm Royal, Tony Ward, Peter Huntsman, Noel Brett, Michael Cain, Greg Chambers, Brett Lunn, Leon Allen, Stephen Krouzecky and Richard Baddeley are but a smattering of the members who were all very willing to talk to me about their firms and what they thought would help me as a partner and attorney and answer my questions no matter how basic they were and which ultimately transformed into **fellowship**.

We are a lucky profession. Our services are needed much more than many realize. It is imperative that the Australian attorney profession strives for and achieves the highest standards of professional and business conduct in a field facing more and more competition. In my view, it is to everyone's benefit in their proverbial boats to rise together, as clients and their IP needs, swell the ocean of IP work to a higher level.

Another **opportunity** that FICPI Australia membership provides includes the ability to talk to IP professionals and IP Office staff and discuss, draft and make well-considered submissions to IP Offices and Government Consultation Committees in Australia and New Zealand. Yet further through the work of numerous committees and groups of FICPI International to carefully review and create motions that become the basis for submission on the vast array of IP issues to IP Offices, including the EPO, the USPTO, JPO, CIPO and many more. This opportunity is precious, and the fact that FICPI submissions are sought and respected is a testament to our predecessors and the ongoing work of FICPI members locally and internationally.

My Vision

So, in summary, I believe that FICPI Australia provides excellent opportunities for attorney self and firm **improvement**, lifelong **fellowships** which can provide business development

opportunities, and the ability to contribute to the workings of the IP system locally and internationally.

My abbreviated version of these advantages boils down to the following three terms: **improvement, fellowship and opportunity**.

I want FICPI Australia to be a sought-after membership by attorneys in Australia. However, a membership application should be submitted to FICPI Australia by a competent attorney of good character such that they can be confidently proposed and seconded by a FICPI Australia member of more than five years standing. Thus, prospective attorney members are encouraged to make the acquaintance of FICPI Australia members and seek their guidance and encouragement to join.

As put so well by Council Member Ronelle Geldenhuys, we can easily build outwards from within our ranks. FICPI Australia members are the best means of promoting membership to attorneys they already know. The member will have confidence that the prospective member will become a productive member of FICPI. This is one of the easiest and best way to grow our membership.

FICPI will benefit since exceptional attorneys will join the FICPI family and the organisation as a whole will grow in stature as new members provide their contributions. Such an inside-to-out approach is bound to be much easier than convincing an attorney who does not know about FICPI to consider membership.

We should, however, also seek to make our vision known amongst the wider attorney profession here in Australia and modify the outdated image of what it means to be a FICPI member.

Yet further, once an attorney becomes an Associate or Full member, it is imperative to facilitate **improvement, fellowship and opportunities** by providing and promoting programs created by FICPI Australia and FICPI International, and making an effort to interact with each new member until they feel comfortable enough to make their own contribution to the tasks at hand now and in the future.

I have only ever experienced **fellowship** from skilled people willing to help me **improve** as well as the profession generally. I have only ever seen FICPI members who work very hard to author

detailed and intelligent submissions to Government, consultation committees and the numerous IP Australia Groups who seek our comments and views. I am also a grateful recipient of the efforts of past FICPI members for the work they tirelessly did to improve legislation and associated regulations for the then-new Patents, Designs and Trade Marks Acts and associated Regulations during their formative stages.

This rich history of FICPI doers, movers and shakers has been sadly overshadowed by misunderstandings that exist and still exist today about what FICPI is and does.

So I urge all FICPI Australia members to promote the **improvement, fellowship and opportunity** mantra to selected fellow attorneys in Australia. Your promotion of this new approach is supportable by evidence of the critical work that has been and continues to be done by FICPI Australia. It is not boasting when I state how well respected FICPI is by those that seek informed and intelligent input on a range of topics that are important to all attorneys and their firms.

My call to action is for you to promote **improvement, fellowship and opportunity** the next time you speak with a potential new member of FICPI Australia.

Thank you

Bill McFarlane
President
FICPI Australia
August 2022