



THE INSTITUTE OF PATENT AND TRADE MARK ATTORNEYS OF AUSTRALIA

## **CODE OF ETHICS**

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**PART 1: PRELIMINARY**

The Memorandum of Association of The Institute of Patent and Trade Mark Attorneys of Australia includes as an object of the Institute "**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 to the profession 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 standards 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;

- INSTITUTE*** - The Institute of Patent and Trade Mark Attorneys of Australia.
- MEMBER*** - A person who is a member of the Institute irrespective of the class of membership and irrespective of where he or she may be ordinarily resident or have his or her practice.
- COUNCIL*** - The Council of the Institute.
- INTELLECTUAL PROPERTY*** - 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.

- PRACTITIONER*** - Any person in private or corporate practice in the intellectual property field, for example, a patent attorney or a trade marks attorney.
- CLIENT*** - 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 or trade mark attorneys, patent agents, trade mark agents, solicitors, lawyers and their clients.
- PROFESSIONAL BODY*** - The Institute or any Foreign Institute of patent or trade mark 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.
- PROFESSIONAL PRACTICE*** - Any practice in which advice is provided or services are performed in connection with intellectual property.
- LAY BODY*** - Any body which is not a professional body as hereinbefore defined.
- PROFESSIONAL JOURNAL*** - 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.
- LAY JOURNAL*** - Any journal or publication which is not a professional journal as hereinbefore defined.
- THE PROFESSION*** - The profession of patent attorney or trade marks attorney.
- CODE*** - This Code of Ethics.
- GUIDELINES*** - The Code of Ethics Guidelines appended to this Code.

**PART 3: PROFESSIONAL CONDUCT**

- 3.01 Council of the Institute has issued this Code for the direction of members in the practice of the profession, and a member is expected to act within the spirit as well as the letter of the various matters set out herein.
- 3.02 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 interests of the profession as a whole,
- in that order.
- 3.03 A member shall in the practice of the profession take care to avoid behaviour and practices that are misleading or deceptive or that are likely to mislead or deceive.  
[SEE GUIDELINES 15 to 18]
- 3.04 It is the duty of a member to maintain professional and ethical standards in the practice of the profession, to promote the interests of his or her clients and of the profession, and, in the practice of the 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 Institute, or any of its members.
- 3.05 A member shall uphold the public reputation of the Institute and of its members and shall at all times give adequate care and attention and apply the necessary expertise to work entrusted to the member by clients.  
[SEE GUIDELINES 1 to 14]
- 3.06 A member shall practise the profession conscientiously and in a manner appropriate to its dignity and shall refrain in correspondence or otherwise from using insulting or provocative language.

- 3.07 A member shall at all times maintain professional standards when dealing with Government officials (e.g. with officials at the Patent, Trade Mark and Designs Offices, 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.
- 3.08 A member shall at all times extend courtesy to the public and other members.
- 3.09 A member shall take all reasonable steps to avoid situations in which his or her 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.  
[SEE GUIDELINES 19 & 20]
- 3.10 At all times a member in the practice of the profession must exercise his or her 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.
- 3.11 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.  
[SEE GUIDELINE 21]
- 3.12 Competition between members shall be fair.
- 3.13 A member may advertise in connection with his or her professional practice provided the advertising:
- (i) Is not false;
  - (ii) Is not misleading or deceptive or likely to mislead or deceive;

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 order the Member to cease or amend such advertising unless such an order would have the effect of inhibiting informative promotion by members.

- 3.14 (a) Subject to sub-paragraphs (b), (c), and (d), a member shall be accountable to the Council for acts and defaults of the following persons not being members of the Institute:
- (i) Any patent attorney, trade marks attorney or other intellectual property practitioner practising in the same firm as the member;
  - (ii) Any patent attorney, trade marks attorney or other intellectual property practitioner 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) Sub-Paragraph (a) is applicable to a member who is employed by a non-member if the member is responsible for the selection and/or control of other employees engaged in intellectual property work.
- (d) For the purposes of sub-paragraph 3.14 (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.
- 3.15 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 4: COMPLAINTS**

(Previous Part 4 rescinded at Special Meeting of Fellows held 3 April 2003 and replaced with new Part 4 below)

- 4.01 A complaint regarding the conduct of a member shall be submitted to the Secretary who shall refer the complaint to an Ethics and Disputes Committee. A member who is called upon by Council or by the Ethics and Disputes Committee to provide information relating to a complaint shall fully, honestly and promptly respond to any such call. Failure by the member to fully and honestly respond to such call, unless a claim is made by the member that a response may tend to incriminate the member, shall be considered conduct unworthy of a member and will accordingly, constitute grounds for suspension or expulsion of the member. Subject to receiving a responsive reply from the member, the Ethics and Disputes Committee will attempt to resolve the dispute and bring about a settlement acceptable to the complainant and the member.
- 4.02 If the Ethics and Disputes Committee is unable to resolve the dispute, the complainant will be invited to provide a formal written complaint, if the complainant has not already done so. The formal written complaint should detail the nature of the complaint. The Ethics and Disputes Committee will then provide a report on the complaint to Council and in particular, advise Council if it appears that any By-Laws or Guidelines of the Institute have been breached by the member. Council will consider the report and if Council considers that relevant grounds exist, may take steps to implement sanctions against that member. Those sanctions may include:
- (a) a public reprimand; and/or
  - (b) an order to compensate the complainant; and/or
  - (c) suspension of the member under Article 29; and/or
  - (d) expulsion of the member under Article 30; and/or
  - (e) referral of the complaint to the designated manager keeping the Register of Patent Attorneys under Section 198 of the Patents Act 1990.

Failure by the member to compensate the complainant, if required to do so within a period by order of Council, will be considered conduct unworthy of a member and will accordingly, constitute grounds for expulsion or suspension of the member. Council will write and advise the complainant of the action, if any, taken against the member.

**PART 5: MISCELLANEOUS**

5.01 In the case of a non-resident member, if there is any conflict between the standards of conduct set forth in this Code and the standards of professional conduct obtaining among reputable patent and trade mark attorneys or agents in the member's own country, compliance by the member with the standards obtaining in his or her own country but not with the standards prescribed herein shall not be deemed to be conduct unworthy of a member unless, after due investigation, Council by a majority vote at a meeting duly called for the purpose, finds that the conduct of the member reflects discredit on the Institute or its members or is prejudicial to the public interest.

5.02 Any member may ask a Committee appointed by Council for that purpose for guidance as to whether:

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

complies with this Code, and the Committee 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.

**SECTION - G**

**GUIDELINES**

**CODE OF ETHICS GUIDELINES**

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, a registered trade marks attorney or an appropriately qualified intellectual property practitioner entitled 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 or a registered trade marks attorney undertaken in the name of or by a member or in the name of a firm of which a member is a principal or which employs a member, shall be actively supervised by a registered patent attorney, in the case of drafting or amending specifications, or by a registered patent attorney, or a registered trade marks attorney or an appropriately qualified intellectual property practitioner entitled to practise in Australia for all professional work other than drafting or amending specifications.
  - (c) A member shall not, in carrying out his professional practice as a registered patent attorney or as a registered trade marks attorney, engage or arrange with any person or persons known to the member as not being qualified to act as agent or representative of the member for the purposes required.
2. A member shall at all times apply his or her utmost skill and diligence in the handling of matters on behalf of his or her clients and associates and shall, on becoming aware of any error, omission or defect in the handling of any matter in his or her 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 his or her care.
3. In the event that a member ceases permanently or temporarily to practice by reason of retirement, incapacity, bankruptcy or any other reason, he or she shall take all reasonable steps to avoid or minimise inconvenience to his or her clients as a result thereof, and shall be especially vigilant to ensure that no statutory period is permitted to expire without necessary action being taken to safeguard the interests of his clients.
4. A member shall at all times be candid with his or her 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 his or her professional services or who withdraws his or her services shall forthwith inform the potential or existing client and shall, where he or she withdraws, take reasonable action to inform the client of the immediate steps required to preserve the client's rights.
6. A member shall not, while employed by another member in the conduct of his or her practice, solicit business from the employer's clients or prospective clients, without the knowledge and consent of the employer.
7. 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 he or she is released from the obligation not to disclose such information. A member is automatically released from the obligation not to disclose information received in confidence if said information becomes published.
8. A member shall not attempt to improperly obtain from another member information relating to a client of such other member.
9. 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 his or her own behalf.
10. A member shall be entitled to accept unsolicited instructions from a client even though the member 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 the circumstances of the case require that the other member should not be informed, (for example, where a further opinion has been requested).

11. (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 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 his or her 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.
12. Where a member is instructed by a client to take over the handling of a case from another member, the member shall ensure, unless his or her instructions 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.
13. 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.
14. 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.
15. In his 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.

16. A member shall not make any representation or indication at his or her office premises or on his or her stationery or likewise which is misleading or is likely to mislead the public.
  
17. In the event that a member carries on practice in Australia as a patent attorney or a trade marks attorney under his or her own name and under one or more business names, or under more than one business name, then any letterheaded stationery used by the member in his practice as a patent attorney or as a trade marks attorney under any one of those names shall also refer to his or her practice under the other name or names.
  
18. If:  
  
a member is engaged in practice as a patent attorney or as a trade marks attorney in Australia (hereinafter called the "Member's Principal Practice");  
  
and where the member is in partnership with another person who is a patent attorney, a trade marks attorney or other intellectual property practitioner in Australia or overseas but is not a partner in the Member's Principal Practice, or the member and the other person are each a director or shareholder of a company or are each a trustee or a beneficiary of a trust, and where  
  
the partnership, company or trust engages in the practice of a patent attorney, or trade marks attorney or other intellectual property practitioner; engages in the management of the practice of a patent attorney, a trade marks attorney or other intellectual property practitioner in Australia or overseas or derives a financial benefit from the Member's Principal Practice or from the practice of the other person;  
  
then the association between the member and the other person, partnership, company or trust shall be referred to on all letterheaded stationery used in the conduct of the Member's Principal Practice.

19. (a) Once a member or a firm in respect of which, at the relevant time, the member was a principal, employed or 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 an 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 an 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 19 (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 19 (a).
20. 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.
21. 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 his or her ownership or interest and obtains written consent.
22. (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.
- (c) The costs referred to in paragraphs (a) and (b) 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.
23. 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.

24. A member should make prior arrangements that, in the event of temporary or permanent inability of that member to practice, all of the member's dealings with the clients are safeguarded. The prior arrangement should be made with another member, whether in the same firm or in a different firm.