

IPTA

THE INSTITUTE OF PATENT
AND TRADE MARK
ATTORNEYS OF AUSTRALIA

**MEMORANDUM AND ARTICLES
OF ASSOCIATION**

AND

BY-LAWS

CODE OF ETHICS

AND

GUIDELINES

INCLUDING AMENDMENTS TO 14 MAY 2020

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SECTION - M
MEMORANDUM OF ASSOCIATION

**MEMORANDUM OF ASSOCIATION
OF
THE INSTITUTE OF PATENT AND TRADE MARK ATTORNEYS
OF AUSTRALIA**

- 1 The name of the Institute is The Institute of Patent and Trade Mark Attorneys of Australia.
- 2 The objects for which the Institute is established are:-
 - (a) To form a united and representative body of the professions of patent attorneys and trade marks attorneys in Australia for the purpose of promoting improvements in the laws and regulations relating to patents, trade marks, designs and plant breeder's rights.
 - (b) To frame and establish By-Laws and a Code of Ethics for observance by patent attorneys and trade marks attorneys in Australia and other members of the Institute in all matters appertaining to their professional practice.
 - (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 promote the education status and training of patent attorneys and trade marks attorneys, and to maintain a high standard of rectitude and professional conduct and knowledge.
 - (e) To provide means for the amicable settlement of differences between practitioners and between practitioners and their clients.
 - (f) To aid in the institution and introduction of practice, procedure and legislation for the benefit and protection of inventors, patentees, traders, plant breeders and manufacturers.
 - (g) To raise and obtain moneys by subscriptions, donations, or otherwise for expenditure in accomplishing or furthering the objects of the Institute, 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 Institute shall be applied solely towards the promotion of the objects of the Institute, 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 Institute, or to any member of the Institute, in return for any services actually rendered to the Institute, nor for goods supplied in the ordinary and usual way of business nor prevent the payment on money borrowed from any member of the Institute of interest at a rate not exceeding the ruling overdraft rate for the time being of the bank of the Institute, or reasonable and proper rent for premises demised or let by any member of the Institute.

- 4 The third paragraph of the Memorandum contains conditions upon which a licence is granted by the Attorney General of Victoria to the Institute in pursuance of the twenty-seventh section of the Companies Act 1928 of said State. For the purpose of preventing any evasion of the provisions of the said paragraph, the said Attorney General may, from time to time, on the application of any member of the Institute and on giving notice of intention so to do, and after affording the Institute an opportunity of being heard in opposition thereto, within such time as may be specified in such notice, impose further conditions which shall be duly observed by the Institute.
- 5 The liability of the members of the Institute is limited.
- 6 Every member of the Institute undertakes to contribute to the assets of the Institute, in the event of the same being wound up during the time that he or she is a member, or within one year afterwards, for payment of the debts and liabilities of the Institute contracted before the time at which he or she 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.
- 7 If, upon the winding up or dissolution of the Institute, 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 Institution or Institutions having objects similar to the objects of the Institute, 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 Institute by virtue of the provisions of the third paragraph of this Memorandum to be determined by the members of the Institute 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.
- 8 True accounts shall be kept of the sums of money received and expended by the Institute, and the matter in respect of which such receipt or expenditure takes place, and of the property credits and liabilities of the Institute, 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 Institute for the time being, shall be open to the inspection of the members. Once at least in every year the accounts of the Institute shall be examined by one or more properly qualified auditor or auditors.

SECTION – A
ARTICLES OF ASSOCIATION

**ARTICLES OF ASSOCIATION
OF
THE INSTITUTE OF PATENT AND TRADE MARK ATTORNEYS
OF AUSTRALIA**

- 1 The Institute of Patent and Trade Mark Attorneys of Australia is, for the purposes of registration, declared to consist of not more than two thousand (2,000) members.
- 2 The office of the Institute will be situated in such place as the Council determines.
- 3 The rights and privileges of every member of the Institute shall be personal to that member, and shall not be transferable or transmittable by the member's own act or by operation of law.

MEMBERS

- 4 The members shall be divided into six classes, Fellows, Emeritus Fellows, Ordinary Members, Student Members, Overseas Members and Distinguished Fellows. For the avoidance of any doubt, reference hereinafter to Fellow or Fellows does not include a member or members of the classes of Emeritus Fellows and Distinguished Fellows.

FELLOWS

- 5 Fellows shall comprise every patent attorney who was a Fellow on 9 March 2012, and every patent attorney or trade marks attorney who has been duly elected or transferred into the class of Fellows. Every candidate for election or transfer into the class of Fellows shall:

- (i) (a) be of good repute;
(b) be ordinarily resident in Australia;

AND EITHER

- (ii) (a) be a patent attorney registered in Australia;
(b) in the opinion of Council, by reason of his or her qualifications in connection with science or engineering, be so qualified as to be able substantially to advance the objects of the Institute; and
(c) have, for not less than five years from the date of registration as a patent attorney, in the opinion of Council, been engaged in Australia in carrying out the professional work of a patent attorney (which may include work relating to trade marks), such work constituting the candidate's main professional activity;

OR

- (iii) (a) be a trade marks attorney registered in Australia, and

- (b) in the opinion of Council, by reason of his or her qualifications and in connection with science, engineering, law, economics, commerce or the arts, be so qualified as to be able substantially to advance the objects of the Institute; and
- (c) have, for not less than five years from the date of registration as a trade marks attorney, in the opinion of Council, been engaged in Australia in carrying out the professional work of a trade marks attorney, such work constituting the candidate's main professional activity.

EMERITUS FELLOWS

5A. Every candidate for transfer into the class of Emeritus Fellows shall:

- (a) at the time of the transfer be a Fellow of the Institute and have, at that time, been a Fellow for a period of at least ten years;
- (b) be of good repute; and
- (c) no longer be registered as a patent attorney or a trade marks attorney in Australia; or
- (d) otherwise, no longer be actively practising as an attorney.

5B. No person shall remain an Emeritus Fellow if, at any time, he or she does not possess the qualifications which governed his or her admission to membership as set out in Article 5A. Council may, in its discretion, suspend or defer the operation of this Article for such time as it thinks fit.

ORDINARY MEMBERS

6 Ordinary Members shall comprise every person who was an Associate of the Institute on 25 April 1998, and every person thereafter duly elected or transferred into the class of Ordinary Member. Every candidate for election or transfer into the class of Ordinary Member shall:

- (a) be of good repute; and
- (b) either:
 - (i) be a patent attorney registered in Australia; or
 - (ii) be a trade marks attorney registered in Australia; or
 - (iii) in the opinion of the Council, by reason of his or her qualifications in and connection with the law, science, engineering or the arts, be so qualified as to be able substantially to advance the objects of the Institute.

- 7 No person shall remain an Ordinary Member if, at any time, he or she does not possess the qualifications which governed his or her admission to membership as set out in Article 6. Council may, in its discretion, suspend or defer the operation of this Article for such time as it thinks fit.

STUDENT MEMBERS

- 8 Student Members shall comprise every person who was a Student Member on 25 April 1998 and every person thereafter elected into the class of Student Member. Every candidate for election as a Student Member shall:
- (a) be of good repute;
 - (b) not be a patent attorney or a trade marks attorney registered in Australia;
 - (c) either (i) be engaged at the time of election, and have been so engaged for a period of at least six months, as a pupil or assistant by or under the supervision of a patent attorney or trade marks attorney registered in Australia, or (ii) be engaged at the time of election, and have been so engaged in Australia for a period of at least six months, in carrying out legal and/or technical work related to industrial property in a department of a firm, corporation or organisation in Australia which is engaged in the carrying out of the industrial property work of the firm, corporation or organisation; and
 - (d) have entered or shall propose to enter for at least one of the subjects of the examinations prescribed for the registration of patent attorneys or trade marks attorneys in Australia.
- 9 A Student Member having the necessary qualifications shall be eligible for transfer from the class of Student Member to the class of Ordinary Member or the class of Fellow as provided by Article 18 hereof.
- 10 No person shall remain a Student Member on becoming registered in Australia as a patent attorney or a trade marks attorney.

OVERSEAS MEMBERS

- 11 Overseas Members shall comprise every person who was an Overseas Member on 25 April 1998 and every person thereafter who is duly elected or transferred to the class of Overseas Member. Every candidate for election as an Overseas Member shall:-
- (a) be of good repute;
 - (b) be qualified to practise and be carrying on practice in a place outside Australia as a patent attorney, trade mark attorney, patent agent or trade mark agent, or in some other capacity which, in the opinion of the Council, is the equivalent thereof in that place;
 - (c) not have an office or place of business in Australia; and
 - (d) not be ordinarily resident in Australia.

DISTINGUISHED FELLOWS

- 12 Distinguished Fellows shall comprise persons who, in the opinion of the Council, have rendered or are able to render such assistance in promoting the objects of the Institute as to merit their admission as Distinguished Fellows and who are elected to the class of Distinguished Fellow, provided that any Distinguished Fellow who may be a Fellow in active practice as a patent attorney or a trade marks attorney within Australia may designate himself or herself a Fellow and retain the privileges of a Fellow.
- 13 Council may, with the consent of the person concerned, elect to the class of Distinguished Fellow any person who, in the opinion of Council possesses the qualifications for such membership.

ELECTION OF MEMBERS

- 14 Any person desirous of being elected as a Fellow of the Institute must be proposed in writing, by a Fellow of the Institute who must certify as to his or her knowledge of the candidate and confirm the candidate's qualifications, and be recommended by two other Fellows of the Institute.
- 14A Any person desirous of being elected as an Ordinary Member of the Institute must be proposed in writing by a Fellow of the Institute who must certify as to his or her knowledge of the candidate and confirm the candidate's qualifications, and be recommended by one other Fellow of the Institute.
- 14B Any person desirous of being elected as a Student Member of the Institute must be proposed in writing, by a Fellow of the Institute who must certify as to his or her knowledge of the candidate and confirm the candidate's qualifications.
- 14C Any person desirous of being elected as an Overseas Member of the Institute must be proposed in writing, by one Fellow of the Institute who must certify as to their knowledge of the candidate and confirm the candidate's qualifications, and be recommended by one other Fellow of the Institute.
- 14D A proposal to be elected as a member of the Institute shall be in the form prescribed by the Council and shall require the candidate to engage to abide by the Articles of Association and By-Laws of the Institute.
- 14E A proposal to be elected as a member of the Institute shall be submitted to the Council, which shall investigate the qualifications of the candidate according to the class of member for which he or she is proposed. If the Council approves of the qualifications of the candidate, the President or one of the Vice Presidents shall be authorised to sign the proposal, and the candidate shall thereupon be deemed elected.
- 15 If the Council does not approve of the qualifications of the candidate, he or she shall be notified to that effect, and an opportunity given to the candidate to present a case to the Council should he or she so desire. The Council shall then reconsider the application and decide accordingly.

- 16 Any person whose proposal for admission as a member has been approved by the Council shall be duly informed thereof in writing.
- 17 An Ordinary Member having the necessary qualifications may, on the proposal of one Fellow of the Institute, and recommendation by two other Fellows of the Institute, be transferred from the class of Ordinary Member to the class of Fellow, provided such proposal be first submitted to and approved by the Council, and signed by the President or one of the Vice Presidents.
- 18 A Student Member having the necessary qualifications may, on the proposal of one Fellow of the Institute, and recommendation by one other Fellow of the Institute, be transferred from the class of Student Member to the class of Ordinary Member, provided such proposal be first submitted to and approved by the Council, and signed by the President or one of the Vice Presidents.
- 19 Every person other than a Distinguished Fellow duly elected a member of the Institute shall be informed thereof in writing and pay the entrance fee and annual subscriptions for the current year within three months, or in the case of Overseas Members, six months after the date of his or her election, otherwise the election will become void, unless the Council extends the time, which in special cases it is hereby authorised to do.
- 20 Every person who has been duly elected a Fellow, Emeritus Fellow, Ordinary Member, Student Member or Overseas Member and who has complied with the provisions of Article 19, and every person duly elected a Distinguished Fellow, shall become a member of the Institute and except in the case of, a Student Member or an Overseas Member, shall receive a Diploma of his or her membership.
- 21 Every Diploma issued by the Institute shall be vested in and remain the property of the Institute and any member who from any cause ceases to be a member of the Institute shall return his or her Diploma to the Secretary immediately on the receipt of a request in writing from the Secretary so to do. In the event of failure by the member to comply with said request, such Diploma shall be recoverable on demand.
- 22 There shall be a Seal of the Institute, which shall not be affixed to any document except by order of the Council, and in the presence of two members of the Council and the Secretary or a third member of Council, who shall attest the affixing thereof.
- 23 (a) Any member having occasion to designate himself or herself as belonging to the Institute shall state the class to which he or she belongs either in full or in accordance with such abbreviations as are hereinafter provided.

- (b) Fellows may designate their membership and their class of membership by the use of the following abbreviation:

FIPTA

or such other abbreviated designation as may hereafter be approved by the Council. No member of any other class of members shall use any abbreviation to indicate membership of the Institute.

REGISTER OF MEMBERS

- 24 (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 Institute, their status or class of membership, 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 he or she ceased to be a member shall be entered in the Register.

ENTRANCE FEES, SUBSCRIPTIONS AND LEVIES

- 25 (a) The Council shall prescribe the entrance fees and subscriptions payable for each class of membership and the time at which and the manner in which such fees and subscriptions shall be paid.
- (b) The Council may, in prescribing subscriptions for any class of members differentiate between practising members and non-practising members.
- 26 (a) In the case of elected members, the first annual subscription shall become payable on the date of election and shall be paid in the case of Fellows, Emeritus Fellows, Ordinary Members and Student Members within three months and in the case of Overseas Members within six months of such date, and thereafter annually on 1 January, provided that the subscriptions of any member duly elected shall be payable pro rata in respect of the remaining months of the year of his or her election.
- (b) Any member whose subscription is in arrears for more than three months in the case of Fellows, Emeritus Fellows, Ordinary Members and Student Members and for more than six months in the case of Overseas Members shall not be entitled to any privileges of membership and unless otherwise determined by the Council, no publications of the Institute shall be forwarded to such members and no access to education programs provided by the Institute will be given to such members while in arrears.
- (c) The Council may, from time to time, fix terms upon which members may compound for the payment of their subscriptions.

- (d) If Council sees good reason for so doing, it may remit or defer in whole or in part, the annual subscription, the annual subscription and/or arrears (if any) and/or any levy, of any member on the ground of ill-health, advanced age, or other sufficient ground, but such case shall first be considered and reported upon by a committee of the Council appointed for the purpose.
- 27 (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 Institute, impose a levy upon members or upon any class of members.
- (b) The Council may, in imposing levies differentiate between members of a class of members in the manner provided by Article 25(b) hereof.
- (c) 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 category of members within a class.
- 28 (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 Fellows 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

- 29 (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 Annual General Meeting) for any cause which shall in its opinion render such suspension necessary or expedient, provided that at least eight members of the Council 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 three-fourths of such members present at the meeting.
- (b) No member shall be suspended unless he or she has first been advised in writing by Council of the grounds upon which the suspension is proposed and has been afforded a period of not less than fourteen (14) days to show cause, either personally or in writing, why he or she should not be suspended.
- (c) Failure by such member, having been advised by Council of the grounds upon which suspension is proposed in accordance with Article 29(b), to respond to the advice from Council, either personally or in writing within the period set by Council may be deemed to be conduct unworthy of a member and may be determined by Council to constitute grounds to justify suspension.

- 30 (a) If it shall appear to the Council that there is reason to believe that any member has been guilty of conduct likely to bring the Institute into disrepute or of conduct unworthy of a member or conduct which, in the absence of satisfactory explanation, would render him or her unfit to remain a member, or that any member has committed a breach of any By-Law, the Council may send to such member a statement in writing of the conduct imputed to him or her, and shall afford the member an opportunity of giving an explanation in writing or in person as he or she may elect, setting a period for a response of not less than one month.
- (b) Failure by such member to respond to such a statement in writing from Council in accordance with Article 30(a) either personally or in writing within the period set by Council may be deemed to be conduct unworthy of a member and may be determined by Council to constitute sufficient grounds to render such member liable to expulsion.
- (c) If on the consideration of such explanation or in the absence of any explanation, Council shall be of opinion that such member ought to be expelled from the Institute, such member shall be liable to be expelled from the Institute at a Special Meeting of Council by resolution, at which meeting there shall be present and vote no fewer than eight Members of Council and for which expulsion no fewer than three-fourths of those present and voting, shall vote. Such member shall be afforded an opportunity to appear at the Special Meeting of Council prior to the vote, and be heard and shall be given no less than fourteen (14) days' notice of the place and time of the Special Meeting of Council. If the resolution for expulsion is passed such member shall thereupon cease to be a member of the Institute and Notice of the Expulsion shall forthwith be sent to the person thereby affected.
- (d) A member expelled from the Institute under Article 30(b) shall have the right to an appeal to a Special Meeting of Fellows. Such an appeal must be lodged with the Secretary within one month from the date on which the Notice of Expulsion is sent to the expelled member. Council will set a date for the Special Meeting of Fellows which must be within three months from the date of appeal and will write to the expelled member and advise him or her of the time and place of the Special Meeting and of the deadline for such expelled member for making written submissions to be presented to the Special Meeting. A report from Council will be laid before that Special Meeting and the expelled member will have an opportunity to respond to that report in person, if present at the meeting, and/or in writing, provided that any written submissions to be presented by or on behalf of the expelled member, are received by the Secretary by 5.00 pm on the seventh (7th) day before the date of the Special Meeting. At the Special Meeting, a resolution to reinstate the expelled member shall be considered and that resolution shall only be

effective if carried by the affirmative votes of a simple majority of the Fellows voting. If the resolution is passed, the original membership of the expelled member shall be reinstated.

- (e) 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 he or she shall obtain a Certificate of Discharge, any member whose estate shall have been sequestrated under the Bankruptcy Act for the time being in force.
- (f) The Council may in its discretion terminate the membership of any Fellow, Ordinary Member or Student Member who does not actively practise or who has ceased to have any direct connection with the profession of a registered patent attorney or a registered trade marks attorney. Further, in its discretion, the Council may terminate the membership of any Fellow, Emeritus Fellow, Ordinary Member or Student Member who no longer possesses the qualifications which governed his or her admission to membership.
- (g) The Council may in its discretion reinstate to membership any Fellow, Emeritus Fellow, Ordinary Member or Student Member whose membership has been terminated under paragraph (f).

Provided that the discretionary power of the Council under paragraphs (f) and (g) hereof shall only be exercised at a meeting of the Council where at least six members of the Council 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 five members of Council or of at least three-fourths of the members of the Council present at such meeting, whichever shall be the greater.

31 Any member having made all payments which shall have become due from him or her, and having returned his or her Diploma to the Secretary or to the Council, may resign his or her membership upon giving to the Council two (2) calendar months' notice of the intended resignation, and on so resigning the date of resignation shall be entered on the Register of Members.

32 If any member shall be in arrears in a subscription or in any levy for one year, and shall fail to pay the arrears within three months after notice has been sent to him or her by the Secretary, his or her membership may be terminated by the Council at any time afterwards, and he or she shall, on the membership being terminated, cease to have any rights as a member of the Institute; but shall nevertheless continue to be liable to pay the arrears in subscription or levy due at the time of the membership being so 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.

33 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 his or her relations with the Institute.

PROCEEDINGS AGAINST MEMBERS

- 34 Before any steps shall be taken by the Council towards the institution of any proceedings against any member in respect of any alleged offence under the Patents Act, Trade Marks Act, Designs Act, and/or Regulations thereunder, such member shall be furnished with a copy of the charge and of the statement (if any) of the facts upon which the charge is based, and shall, where practicable, if he or she so requires, be entitled to have inspection of the original documents on which it is intended that proceedings shall be based, and shall if he or she so requires be given a reasonable opportunity of giving to the Council an explanation in writing or in person as the member may elect. In respect of any step that may be taken by the Council towards the institution of any proceedings at law against any member, any written requisition that such step be taken shall be signed by the President and two other members of the Council who were present at the Council Meeting which considered the matter at issue.

MEETINGS OF THE INSTITUTE

- 35 All General Meetings of the Institute shall be held at such time and place as the Council may determine.
- 36 An Extraordinary General Meeting of the members may also be called at any time by the Council, and shall be called by it whenever a requisition signed by ten members of the Institute, specifying the object of the meeting, is left with the Secretary. All Extraordinary General Meetings shall be held where directed by the Council. If for twenty-one (21) days after the delivery of such requisition, a meeting be not called in accordance therewith, any ten members of the Institute may call an Extraordinary General Meeting in accordance with the requisition.
- 37 Notices of every General Meeting stating the date and place of such meeting shall be sent to every Distinguished Fellow, Fellow, Emeritus Fellow, Ordinary Member and Student Member of the Institute 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.
- 38 (a) There shall be an Annual General Meeting held in each calendar year. At least two (2) months prior to the date of the Annual 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, Vice Presidents and members of Council.

- (b) The business of the Annual General Meeting shall be to receive and deliberate upon the report of the Council on the state of the Institute, with the annual statement of accounts, and to elect the President and Vice Presidents, to fill the vacancies in the Council, and to elect officers for the ensuing twelve (12) months and to discuss any motion of which due notice may have been given.

39 The business at Ordinary General Meetings of the Institute shall be conducted as nearly as possible in the following order:

- 1st The minutes of the preceding meeting to be read, and after having been confirmed, to be signed by the Chairman;
- 2nd Business arising out of the minutes;
- 3rd Communications from the Council;
- 4th Candidates elected to be announced;
- 5th Any member present for the first time since his or her election, to be introduced by the Chairman to the meeting;
- 6th Other communications to be read and discussed;
- 7th Other business, if any.

40 Notice in writing must be given to the Secretary at least twenty-one (21) days before the day for holding any General Meeting, of any motion to be moved at such meeting unless the meeting shall otherwise decide.

41 Every member shall have the privilege of introducing visitors at Ordinary General Meetings with the consent of the President or Chairman of the meeting.

42 The Council may at any time call a Special Meeting of Fellows for a specific purpose relative to the adoption, alteration or repeal of any of the Articles of the Association or of any of the By-Laws, or any part of the Code of Ethics of the Institute, or the direction or management of the affairs of the Institute; and the Council is at all times bound to do so on a requisition in writing of ten Fellows specifying the nature of the business to be transacted. If for twenty-one (21) days after delivery of such requisition a meeting not be called in accordance with the requisition any ten Fellows may call a Special Meeting of Fellows in accordance with the requisition.

43 A notice shall be sent to all Fellows at least thirty (30) days before the time appointed by the Council for any such Special Meeting of Fellows. The notice shall specify the nature of the business to be transacted, and no other than that business shall be transacted at that meeting.

PROCEEDINGS AT MEETINGS

- 44 All members are entitled to be present at every General Meeting.
- 45 Twenty-five Fellows personally present shall constitute a quorum for the purpose of any Special or General Meeting.
- 46 If within thirty (30) minutes after the time fixed for holding any meeting a quorum be not present the meeting shall be adjourned by the Chairman.
- 47 The President shall be Chairman at every meeting, and in the absence of the President, one of the Vice Presidents, and in the absence of a Vice President, a member of Council shall take the chair; and if no member of Council be present, or, if present, be unwilling to take the chair, the meeting shall elect a Chairman.
- 48 (a) Fellows may be represented by proxy, provided that the proxy appointed be a Fellow, and no one Fellow shall hold more than ten proxies, with the exception of the Chairman, who may carry an unlimited number of proxies. Fellows represented by proxy shall be considered as being present.
- (b) A notice of Special or General Meeting may specify the availability of technology that gives the members a reasonable opportunity to participate, such as videoconference or other audio-visual communication means. Any member attending a Special or General Meeting by such technology 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.
- (c) A notice of Special or General Meeting may provide that a vote that would otherwise occur at a Special or General Meeting will take place by one of the following means (being a means not involving the conduct of a vote in person or by proxy at a Special or General Meeting):
- (i) a postal ballot; or
 - (ii) an electronic or online voting system (whether operated by the Institute or by an external service provider chosen by Council), which allows members to vote electronically,
- in each case to be conducted before that Special or General Meeting.
- 49 Votes may be given either personally or by proxy, as hereinafter mentioned. In the case of a Special or General Meeting for which a postal ballot or an electronic or online voting system has been organised in advance of the Special or General Meeting, votes may be made personally by postal ballot or by electronic or online means.
- 50 The instrument appointing a proxy shall be under the witnessed signature of the appointer. No person shall be appointed a proxy who is not a Fellow of the Institute.

- 51 (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 to another day whether or not to another place any Fellow 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 meeting.

52 Any instrument appointing a proxy shall be in the form of or to the effect following:

I, _____
of _____
being a Fellow of the Institute of Patent and Trade Mark Attorneys of Australia,
hereby appoint _____
or alternatively _____
as my proxy, to vote for me and on my behalf at the meeting of the Institute to be held
on the day of, 20.... and at any adjournment or adjournments thereof.

As witness my hand this day of, 20....

Signature _____
Witness _____

53 Fellows only shall be entitled to vote on the election of the President, Vice Presidents, and Council, or on any proposed adoptions, alterations or repeals in the Articles of Association of the Institute or of any By-Laws or part of the Code of Ethics of the Institute, or on any matters affecting entrance fees, subscriptions or levies or the welfare or the direction or management of the affairs of the Institute or practice of the profession in Australia. Any Fellow whose subscription is in arrears at the date of the Annual Meeting shall be ineligible for election.

54 Any member whose subscription is in arrears, shall not be entitled to vote at any meeting of the Institute or to vote in any election for members of Council.

55 The decision of any meeting shall be ascertained by the votes of the members entitled to vote unless after the vote a poll is forthwith demanded, and by a poll of members entitled to vote when a poll is thus demanded. The manner of voting or taking a poll shall be at the discretion of the Chairman, and an entry in the minutes shall be sufficient evidence of the decision of the meeting. Each member entitled to vote shall have one

vote on each motion and no more. In case of equality of votes, the Chairman shall have a second or casting vote.

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

57 The Resolutions passed at Special Meetings of Fellows concerning alterations either to the Articles or By-Laws, or the direction or management of the affairs of the Institute, shall only be effective provided they are carried on the affirmative votes of at least three-fourths (3/4) of the Fellows voting, and provided always that at least one-half (1/2) of the Fellows on the Register of Members of the Institute and entitled to vote, shall vote either personally or by proxy, or in the case of postal ballot or an electronic or online voting system, by a personal postal ballot or a personal electronic or online vote.

COUNCIL AND OFFICERS

58 The affairs of the Institute shall be managed by a Council, assisted by officers to be appointed as prescribed by these Articles. The Council shall be elected annually from Fellows, and shall consist of one President, two Vice Presidents, eight ordinary members of Council and the Immediate Past President. With effect from the Annual General Meeting held in the calendar year 2001, the Council shall consist of one President, two Vice Presidents, ten ordinary members of Council and the Immediate Past President. (Amended at the Special Meeting of Fellows held on 6 April 2000).

59 The President and Vice Presidents of the Institute shall be respectively President and Vice Presidents of the Council.

60 In the event of a member of Council other than the Immediate Past President being absent from or not represented by an alternative Councillor at three consecutive ordinary meetings of the Council without leave of absence being obtained from Council, then the office of such member of the Council shall become vacant and every such vacancy shall be deemed to be an extraordinary vacancy.

61 Any member of the Council desirous of resigning from office, may send his or her resignation in writing to the Council, and on the acceptance of such resignation by the Council, but not before, the office shall become vacant.

62 The Council may fill an extraordinary or casual vacancy in the Council (including any casual vacancy in the office of President or Vice Presidents) and the President, Vice Presidents, or member of Council so appointed by the Council shall retire at the succeeding Annual General Meeting, but be eligible for re-election. Vacancies not filled at such Meeting shall be deemed to be casual vacancies within the meaning of this Article.

- 63
- (a) All nominations for the positions of President, Vice Presidents and members of Council shall be received by the Secretary at least thirty (30) days prior to the date of the Annual Meeting.
 - (b) In the event of no nominations for any position or positions being received, then the Council shall nominate such persons as it deems fit to fill the vacancy or vacancies in such nominations.
 - (c) Nominations must indicate the position or positions in respect of which the candidate is nominated and must be signed by at least two Fellows and by the nominee or his or her 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 Chairman of the Annual 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 immediately forward to each Fellow 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 he or she 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, being the first preference and proceeding in numerical order, his or her 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 Vice President, followed by the votes for the positions of member of Council.

Candidates found to be elected to a position shall thereupon be eliminated from the counting of votes for other positions.
 - (g) In an election for President, 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 Vice President, one vote shall be accorded to each candidate receiving the first or the second preference of a voter for that position. In the event that the candidate receiving the first or second preference of a voter for the position of Vice President has already been elected President the candidates receiving the voter's two highest remaining preferences shall be each accorded a vote. The candidates receiving the

highest and the second highest number of votes shall be considered to be duly elected.

In an election for the position of member of Council one vote shall be accorded to each candidate receiving one of the first to the tenth preferences, inclusive, of a voter for that position. In the event that the candidate receiving one of the first to tenth preferences, inclusive, of a voter for the position of member of Council has already been duly elected President or a Vice President the candidates receiving that voter's ten highest remaining preferences shall each be accorded a vote. The candidates receiving the highest to the tenth 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, that voter's 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 Vice President or member of Council 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.

64 Previous to the commencement of balloting for the President, Vice President and members of Council, the meeting shall choose two or more competent persons as scrutineers, who shall receive the votes. The ballot shall remain open for at least fifteen minutes.

- (a) A panel of scrutineers comprising four (4) or more Fellows shall be appointed at the Annual Meeting to be scrutineers for any ballot for the positions of President, Vice President, and Members of Council held in the following year. Any Fellow appointed as a scrutineer who stands as a candidate in an election in the following year will be debarred from acting as a scrutineer for the ballot in that year. If fewer than two scrutineers remain available or eligible to act as scrutineers, the Secretary shall choose additional Fellows to act as scrutineers, as necessary.
- (b) The ballot shall open immediately following the forwarding of the ballot papers in accordance with Article 63(e) and will remain open until 5.00 pm on the seventh (7th) day before the Annual Meeting. Ballot papers returned by that time to the secretary in a sealed envelope shall be counted. The secretary shall deliver the ballot papers to one of the scrutineers appointed at the previous Annual Meeting who, together with another of those appointed

scrutineers selected by the secretary, shall count the votes. Those scrutineers shall report in writing to the Chairman of the Annual Meeting who shall declare the names of the persons elected as President, Vice President, and Members of Council for the ensuing year.

65 There shall be an Auditor of Accounts and a Secretary. The Secretary shall be appointed annually by the Council but the appointment of the Secretary, or any other employee of the Institute, may be revoked at any time by the Council.

66 The Council may pay to the Secretary, or other employee or employees, such salaries, wages or remuneration, and confer on them such privileges as may from time to time be thought proper.

67 The powers and duties of the Secretary, or other employees shall (subject to these Articles) be determined by the Council.

FUNDS OF THE INSTITUTE

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

69 All monies paid or payable on account of the Institute 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 Institute and such payments may be made in advance of approval of the Council.

AUDITOR

70 The Auditor shall have access, at all reasonable times, to the accounts of the pecuniary transactions of the Institute, and shall verify and sign the Annual Statement of the Accounts before it is submitted by the Council to the Annual General Meeting.

SECRETARY

71 It shall be the duty of the Secretary, under the direction of the Council, to conduct the correspondence of the Institute; to attend all meetings of the Institute, of the Council and of Committees; to take minutes of the proceedings of such meetings; to read the minutes of the preceding meeting and all communications that may be ordered to be read at such meetings; to superintend the publication of such papers, journal, or other publication, as the Council may direct; to take charge of the library when established, and all documents the property of the Institute; to direct the collection of the subscriptions and the preparation of the account of the expenditure of the funds; and to present all accounts to the Council for inspection and approval; to keep the Register of Members; and to generally conduct the ordinary business of the Institute.

POWERS AND PROCEDURE FOR COUNCIL

- 72 The Council shall meet as often as the business of the Institute may require and may regulate its own mode of procedure. Four members of the Council personally present shall form a quorum. Members of Council may be represented at Council meetings by an Alternate Councillor who is also a member of Council. An Alternate Councillor shall be appointed by notice in writing signed by the Councillor whom he or she represents and such notice shall be produced at the meeting for which the appointment is intended. A member of Council represented by an Alternate Councillor shall not be deemed to be present for the purpose of forming a quorum. An Alternate Councillor may exercise, in addition to his or her own vote, the vote of the Councillor whom he or she represents. The Council may appoint Committees for special purposes to report to the Council.
- 73 All questions, unless otherwise specially provided, shall be decided in the Council by vote, but at the desire expressed by any two members 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.
- 74 A Statement of the Funds of the Institute and of the Income and Expenditure during the past year terminating on the 31st December shall be made under the direction of the Council, and after having been verified and signed by the Auditor, shall be laid before the Annual General Meeting.
- 75 The Council shall present a report to each Annual General Meeting.
- 76 It shall be within the discretion of the Council to accept papers presented for reading at the Meeting of the Institute, and also to arrange for the publication and sale of any journal, periodical, or other publication, as it may deem fit, and to carry on the business connected with the publication of such journal or periodical and it shall be the duty of the Council to adopt every possible means for advancing the objects and for properly conducting the business of the Institute.
- 77 No act done by the Council, whether *ultra vires* or not, which shall receive the sanction of the members of the Institute in General Meeting, shall be afterwards impeached by any member of the Institute on any ground whatsoever, but shall be deemed to be an act of the Institute.

BY-LAWS AND CODE OF ETHICS

- 78 The Council shall, in its discretion, when considered advisable or desirable, propose the adoption of any new By-Law or any new part of the Code of Ethics, or propose the alteration or repeal of any existing By-Law or any part of the Code of Ethics consistent

with the Memorandum and Articles of Association, and summon a Special Meeting of Fellows only to decide on the same.

- 79 Adoption, alterations or repeals of the By-Laws or any of them or of the Code of Ethics or any part of it may be made only by resolutions carried at a Special Meeting of Fellows convened for the purpose.
- 80 (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.
- 81 The Council shall publish a Code of Ethics setting forth required standards and practices with respect to professional practice of a patent attorney or a trade marks 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 Guidelines as it sees fit.

DIVISIONS

- 82 The members of the Institute resident in any one or more of the Australian States or Territories may assemble as a Division of the Institute to promote the objects of the Institute at such times as may by themselves be determined, and until otherwise arranged meetings of such Divisions shall be convened by the senior practising resident member of Council or if he or she be unable to act or fail or refuse to act then such meeting shall be convened by any other resident member of the Council, and the deliberations of such meetings conveyed in due course to the Council. No business transacted at any such meeting shall be binding on the Institute.

CLASS MEETINGS

- 83 (a) The Council or the members of any class of membership other than the class of Fellows may on giving fourteen (14) days' notice to the members of the class concerned call a Special Meeting of that class of membership for any purpose consistent with the objects of the Institute.

- (b) The President or his or her nominee shall be the Chairman of any such meeting provided that if the President is not present and does not nominate a Chairman who is present, the meeting may elect a Chairman.
- (c) Notice of the meeting shall be given to the Council and to all members of the class of members and all Fellows of the Institute in the State or Territory in which the meeting is to be held and all such members and Fellows shall be entitled to attend and vote at such meeting.
- (d) A report of the meeting shall be given to the Council but no business transacted at any such meeting shall be binding on the Institute.

SECTION - B
BY-LAWS

**BY-LAWS
OF
THE INSTITUTE
OF PATENT AND TRADE MARK ATTORNEYS
OF AUSTRALIA**

- 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 Institute.
- 2 No member shall, except through the Council of the Institute, approach the Minister, the Commissioner, or any Government Department 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 made personally by the member and not in his or her capacity as a member of the Institute.
- 3 No member practising in partnership with any person not a Fellow, shall use after the title of the firm any word or letters which in any way suggest or indicate that all the members of the firm are Fellows.
- 4 No member shall behave in a manner contrary to that defined in the Code of Conduct issued as a standard of practice under the *Patents Act 1990* and the *Trade Marks Act 1995* and any such contrary behaviour shall be deemed to be conduct unworthy of a member of the Institute.

SECTION - C
CODE OF ETHICS

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, plant breeder's rights, 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 14 to 17]
- 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 13]
- 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, Designs and Plant Breeder's Rights 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 to 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 18 & 19]

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 20]

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

- 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 Trans-Tasman IP Attorneys Board established under Section 227A of the *Patents Act 1990* and constituted under the *Patents Regulations 1991*.

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, Designs Act, or Plant Breeder's Rights 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 or her 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 or her clients.
- 4 A member shall at all times be candid with his or her clients 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 services, 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 If, in any representation including, but not limited to, a representation in any communication - electronic or otherwise, presentation, advertisement, website, professional or social media post, marketing material or the like 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.
- 14 In his or her 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 including, but not limited to, a representation in any communication - electronic or otherwise, presentation, advertisement, website, professional or social media post, marketing material or the like circular, advertisement or otherwise 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 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 or website used by the member in his or her 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.
- 17 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 and websites used in the conduct of the Member's Principal Practice.

- 18 (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.
- (b) Where the member or the firm referred to in Guideline 18 (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 18 (a).
- 19 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 and take steps to overcome the conflict.
- 20 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.
- 21 (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.

- 22 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.
- 23 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.

IPTA MOTIONS AFFECTING THE INTERPRETATION OF GUIDELINES

(carried at the Annual General Meeting of 21 April 1990)

- 1 Any firm, having at least one principal who is a Fellow of the Institute, which wishes to be included in any institute entry in a directory shall provide the Institute Secretariat with advice that the firm inclusion is required and with information to be included by a date not later than 15 May of the year in which the entry is to be made or by such date as is advised from time-to-time by the Institute Secretariat to accommodate the requirements of the publisher of the directory.
- 2A Any firm, having at least one principal who is a Fellow of the Institute, which wishes to be included in any Institute entry in a directory in the city or cities in which the firm has a permanent place of business shall provide the Institute Secretariat with information to be included in the entry and shall undertake to restrict such information to include not more than:
 - a) The name of the firm.
 - b) The address of the firm in that city or those cities.
 - c) The contact number(s) of the firm, such as telephone and fax numbers.
 - d) A list of the names of Fellows or ordinary members of the Institute who are registered patent attorneys or registered trade mark agents or registered trade marks attorneys or legal practitioners in the firm at the address to which the entry relates.
 - e) The address, contact numbers of any office of the firm in any other location, but not the names of principals or other persons in the office in the other location if that location is in another state or territory.
- 2B Any firm, having at least one principal who is a Fellow of the Institute, which wishes to be included in any Institute entry in a Directory in the city or cities in a state or territory in which the firm does not have a permanent place of business shall provide the Institute Secretariat with information to be included in the entry and shall undertake to restrict such information to include not more than:
 - a) The name of the firm.
 - b) The address of the firm.
 - c) The contact number(s) of the firm, such as telephone and fax numbers.
- 3 Item 3 rescinded at the Annual General Meeting of 25 March 1999.
- 4 Item 4 rescinded at the Annual General Meeting of 25 March 1999.
- 5 Any firm, having at least one principal who is a Fellow of the Institute, which wishes to be included in any Institute entry in a directory shall undertake to meet payment within 60 days of any invoice rendered by the Institute Secretariat in respect of costs incurred in placing the entry.