

**EXPLANATORY STATEMENT**  
*Patents Act 1990 and Trade Marks Act 1995*

**Code of Conduct for Patent and Trade Marks Attorneys**

The primary purpose of the *Code of Conduct for Patent and Trade Marks Attorneys* ('the Code') is to explain to patent and trade marks attorneys the standards of professional conduct that they are expected to meet. A secondary purpose of the Code is to provide the Professional Standards Board for Patent and Trade Marks Attorneys (the Board) with a benchmark by which the professional conduct of registered patent and trade marks attorneys may be assessed.

The Code supersedes the previous *Code of Conduct for Patent and Trade Marks Attorneys* ('the 2008 Code'), which was incorporated into the Patents Regulations 1991 by reference to it in regulation 20.32 of those regulations, with effect from 1 July 2008 to 14 April 2013.

The provisions of the Code are exactly the same as those of the 2008 Code, but are now established as a Legislative Instrument and published in the Federal Register of Legislative Instruments. This ensures that an authoritative text of the provisions can be accessed on the Australian Government's ComLaw website.

The Code is an interim measure pending a review of its provisions, following the changes made by the *Intellectual Property Laws Amendment (Raising the Bar) Act 2012* and the *Intellectual Property Legislation Amendment (Raising the Bar) Regulation 2013 (No. 1)*. A revised Code of Conduct reflecting these changes is expected to be made later in 2013, following public consultation on a revised draft code.

No new consultation is considered necessary on the Code, because it merely restates the longstanding provisions of the 2008 Code which has been in use by the profession (and publicly available on the Board's website) since July 2008.

The Office of Best Practice Regulation in the Department of Finance and Deregulation has advised that no Regulation Impact Statement is required to be prepared for this Code.

The Code commences on 15 April 2013.

Explanatory notes on selected aspects of the Code are set out in Attachment A.

A Statement of Compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided as Attachment B.

## **Attachment A: Details of the Code of Conduct for Patent and Trade Marks Attorneys 2008**

### ***Operation of the Code as Legislative Instrument***

The 2008 Code has been employed by the attorney profession and the Professional Standards Board since 2008. From 1 July 2008 to 14 April 2013, the 2008 code has been incorporated into the Patents Regulations 1991 by reference to it in regulation 20.32 of those regulations. It is intended that when made a Legislative Instrument, the Code will continue to operate in the same way as it did in its previous form. Comments on selected sections of the Code are included below.

#### ***1. Background***

The Code's Background sets out basic information regarding the Code.

#### ***2. Objectives of the Code***

The *Objectives of the Code* allude to the need for fair and equitable dealings between attorneys and clients, including IP Australia (the Patents, Trade marks, Designs and Plant Breeder's Rights Office).

#### ***3. The Code of Conduct***

The body of the Code is set out in *The Code of Conduct* and provides specific guidance (with selected details explained, below).

##### ***3.1 Preamble***

The Code applies to all registered patent and/or trade marks attorneys.

##### ***3.2 Code***

Past precedents set by the Board, along with all relevant Tribunal decisions, are intended to continue in effect.

#### ***5. Complaints against an attorney***

##### ***5.4 Complaints and discipline***

Contact details for the Board's Secretary remain the same.

#### ***6. Administration of this code***

##### ***6.1.iii Copies of this Code of Conduct***

Contact details for the Board's Secretary remain the same.

**Attachment B: Statement of Compatibility  
with Human Rights**

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Code of Conduct for Patent and Trade Marks Attorneys***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Code of Conduct for Patent and Trade Marks Attorneys* (the Code) is a Legislative Instrument governing the standards of practice for patent attorneys, trade marks attorneys, and patent and trade marks attorneys (the attorneys).

The Code applies to:

- individual registered attorneys including those employed in companies undertaking the business of the company;
- registered incorporated attorneys;
- attorney directors of registered incorporated attorneys; and
- associated persons who perform work for the registered individual or incorporated attorneys.

The intention of the Code is to provide a framework of professional conduct required of attorneys in dealing with their clients, other professional service providers, and IP Australia (the government agency incorporating the Patent, Trade Marks, Designs and Plant Breeder's Rights Office).

The Code further assists by providing a standard of acceptable conduct that can be used in the settling of disputes, and to assist clients of registered attorneys and others dealing with the professions to understand the obligations of attorneys to their clients, IP Australia and each other. The Code also sets out how information can be provided to the Professional Standards Board for Patent and Trade Marks Attorneys (the Board) to enable the Board to investigate the conduct of an attorney.

The Code supersedes the previous *Code of Conduct for Patent and Trade Marks Attorneys* ('the 2008 Code'), which was incorporated into the Patents Regulations 1991 by reference to it in regulation 20.32 of those regulations, with effect from 1 July 2008 to 14 April 2013.

The provisions of the Code are exactly the same as those of the 2008 Code, but are now established as a Legislative Instrument and published in the

Federal Register of Legislative Instruments. This ensures that an authoritative text of the provisions can be accessed on the Australian Government's ComLaw website.

The Code is an interim measure pending a review of its provisions, following the changes made by the *Intellectual Property Laws Amendment (Raising the Bar) Act 2012* and the *Intellectual Property Legislation Amendment (Raising the Bar) Regulation 2013 (No. 1)*. A revised Code of Conduct reflecting these changes is expected to be made later in 2013.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

### **The Professional Standards Board for Patent and Trade Marks Attorneys**