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IP Australia



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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**ARRANGEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW
ZEALAND RELATING TO TRANS-TASMAN**

REGULATION OF PATENT ATTORNEYS

CONSULTATION PAPER

NOVEMBER 2021

ACKNOWLEDGEMENT OF COUNTRY FROM IP AUSTRALIA

We acknowledge the Aboriginal and Torres Strait Islander peoples of Australia. We acknowledge the Traditional Custodians of the lands on which our agencies are located and where we conduct our business. We pay our respects to ancestors and Elders, past, present and emerging. We acknowledge Australian Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to the land, waters and seas and their rich contribution to our society.

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The IP Australia and Ministry of Business, Innovation and Employment (**MBIE**) seeks written submissions on the issues raised in this document by **2 February 2022**.

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Please also include your name, (if applicable) the name of your organisation in your submission and your contact details in the cover letter or e-mail accompanying your submission.

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Introduction

In March 2013, the Governments of Australia and New Zealand entered an Arrangement relating to Trans-Tasman Regulation of Patent Attorneys (**Arrangement**).¹ The Arrangement aimed to provide a joint registration regime for patent attorneys to practise in Australia and New Zealand. The Arrangement included commitments by both Governments to implement the regime.

Consistent with the Arrangement, legislation was passed by the Australian Government creating a joint patent attorney profession, as well as establishing the Trans-Tasman Attorneys Board (**Board**) and Disciplinary Tribunal (**Tribunal**). The New Zealand Government similarly passed legislation supporting the joint regulation of the profession as set out in the Arrangement, including recognising the Board and the Tribunal. The regime commenced on 24 February 2017.²

The Arrangement requires that a review of its effectiveness with a view to deciding on and implementing any necessary improvements is carried out no later than 5 years after it has taken effect. This consultation is an important element of the review process.

The review will also consider research, feedback and issues raised through this consultation paper and other avenues.

Structure of this report

This report is divided into two parts with three appendices:

- **Part A** looks at the scope of the review.
- **Part B** looks at the issues raised, in accordance with the Arrangement's six objectives, to:
 - A. strengthen the relationship between Australia and New Zealand;
 - B. provide a joint regulatory regime for patent attorneys in Australia and New Zealand;
 - C. allow economies of scale in institutional arrangements;
 - D. minimise regulatory and business compliance costs;
 - E. increase business confidence in the quality and standard of service provided by patent attorneys; and
 - F. facilitate competition in the market for patent attorney services.
- **Part C** looks at the regulatory regime in Australia for trade mark attorneys.
- **Part D** provides a summary of questions.

The appendices are as follows:

- **Appendix A:** IP Australia Patent Data – Australian Represented Applications
- **Appendix B:** IP Australia Patent Data – Non-Australian Represented Applications
- **Appendix C:** Intellectual Property Office of New Zealand Patent Data.

¹ https://www.ipaustralia.gov.au/sites/default/files/bilateral_arrangement.pdf?acsf_files_redirect

² Australia gave effect to the Arrangement by passing the *Intellectual Property Laws Amendment Act 2015* (Cth) which amended the *Patents Act 1990* (Cth). Associated amendments were also made to the *Patent Regulations 1991* (Cth). In New Zealand, the *Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Act 2016* (NZ) amended the *Patents Act 2013* (NZ) to give effect to the Arrangement for the joint regulation of the attorneys applying in New Zealand.

Part A – Scope

Scope of Review

This review aims to assess the effectiveness of the Arrangement relating to Trans-Tasman Regulation of Patent Attorneys including a review of the joint registration regime, the Board and the Tribunal against the objectives of the Arrangement. The review is being conducted with a view to informing potential enhancements to the regime.

The Arrangement focusses on the provision of patent attorneys services in Australia and New Zealand, but the Australian regulatory regime for trade mark attorneys in many respects mirrors the Trans-Tasman patent attorney regime. For example, requirements for maintaining registration and the disciplinary aspects of the regime are identical for patents and trade marks attorneys. The effectiveness of the regime in relation to trade mark attorneys registered in Australia is considered in Part C. The matter of whether or not New Zealand should provide a registration regime for trade mark attorneys and, if so, whether it would be a joint Trans-Tasman regime with Australia is not within the scope of this review.

Part B: Issues

Overview

The Arrangement's objectives are:

- A. strengthen the relationship between Australia and New Zealand;
- B. provide a joint regulatory regime for patent attorneys in Australia and New Zealand;
- C. allow economies of scale in institutional arrangements;
- D. minimise regulatory and business compliance costs;
- E. increase business confidence in the quality and standard of service provided by patent attorneys; and
- F. facilitate competition in the market for patent attorney services.

This consultation paper discusses each of these objectives in turn and identifies potential issues that might be preventing those objectives from being fully realised.

A. Strengthen the relationship between Australia and New Zealand

The Arrangement aims to strengthen the relationship between Australia and New Zealand. It was entered into recognising the mutually beneficial economic and trade framework which has developed under the Australia-New Zealand Closer Economic Relations Trade Agreement (**ANZCERTA**), furthered by the Protocol on Trade in Services to ANZCERTA and the Trans-Tasman Mutual Recognition Arrangement.

The ANZCERTA is one of the most comprehensive bilateral free trade agreements in existence. The Arrangement is part of the Single Economic Market outcomes framework, which aims to create a seamless trans-Tasman business environment. The Arrangement further enhances an already close relationship, as part of a wider approach of providing mutual recognition of occupations and minimising impediments to the movement of skilled personnel between jurisdictions.

Given the strong relationship between Australia and New Zealand, no specific amendments are proposed to the Arrangement to address this issue. Both countries intend the arrangement to continue as part of a broader suite of economic measures.

Q1. How has the joint regulatory regime impacted the relationship between Australia and New Zealand?

B. Provision of a joint regulatory regime for patent attorneys in Australia and New Zealand

The Arrangement resulted in the creation of a joint registration scheme for patent attorneys in Australia and New Zealand. Legislation implementing the Arrangement commenced in both countries on 24 February 2017 and established the Board as a single statutory body responsible for the regulatory and disciplinary regime for patent attorneys in Australia and New Zealand. Similarly, the Tribunal hears and determines disciplinary proceedings commenced by the Board against patents attorneys in Australia or New Zealand. The Designated Manager, currently the Director-

General of IP Australia, has responsibility for registering patent attorneys and maintaining the register under the regime.

Any complaints received by the Board are assessed and investigated by the Secretariat before consideration by the Board regarding any appropriate further action. Few instances of disciplinary action have occurred. This means that many aspects of the regime relating to referral of jurisdiction, including the availability and accessibility of appeals and review from New Zealand have not been tested.

Impact on the distribution of patent attorneys

The relatively small size of the cohort of registered patent attorneys in Australia and New Zealand and the short time since implementation, including the impact of Covid-19 pandemic, make it difficult to make conclusions on how the distribution of patent attorneys across Australia and New Zealand has been impacted by the joint registration scheme based on data only.

An examination of the register as of 1 July 2021 shows that since 24 February 2017 the number of registered patent attorneys in New Zealand has decreased from 229 to 205, whilst during the same period the number of Australian patent attorneys has grown from 753 to 797. After an initial dip in registrations from New Zealand following the implementation of the regime and the imposition of higher fees and CPE requirements in 2017 and 2018 respectively, there has been a net increase of 13 New Zealand attorneys from 2019, a higher rate of growth compared to a net increase of 25 Australian attorneys in the same period.

This and the fact that more registered attorneys have changed their address from Australia to New Zealand than vice-versa provides no evidence for any hollowing out of the profession in New Zealand.

There are likely to be a range of factors impacting on the size of the profession in each country, including:

- the demand for patent attorney services from Australian, New Zealand and foreign businesses;
- the standards and quality of service the joint regime requires from patent attorneys;
- the financial capability of innovative businesses, especially small businesses, to afford the services of patent attorneys;
- the extent to which the qualifications criteria for registration may be acting as an impediment on the number of new entrants into the profession; and
- how the joint regime is impacting on competition in the market for patent attorneys services.

These factors and others are discussed below.

Q2. How has the joint registration scheme impacted upon the availability of patent attorney services in Australia and New Zealand?

C. Economies of scale in institutional arrangements

The Board and the Tribunal are supported by a small Secretariat comprised of employees of IP Australia. The Secretary to the Board is the first point of contact for complaints and disciplinary issues. The Secretariat supports all patent attorneys across Australia and New Zealand. The

Secretariat also supports the Designated Manager and is the first point of contact in respect of any inquiries regarding the registration of patent attorneys.

The Board typically meets three times per year. In addition to considering disciplinary matters, the Board considers at its meetings the following applications:

- Accreditation of courses
- Approval of qualifications
- Approval of knowledge requirements
- Exemptions from knowledge requirements.

The administration of the Board, Tribunal and Secretariat through a combined set of institutional arrangements allows for economies of scale, avoiding the inevitable duplication of effort which would come with Australia and New Zealand administering separate regulatory systems. A level of coordination between the two countries is required to maintain a single regulatory regime, but the costs involved are offset by the benefits of the joint arrangements.

Q3. What improvements, if any, could be made to the way in which the Board operates?

Q4. What other actions, if any, could be undertaken to improve the economies of scale in institutional arrangements under the joint registration scheme?

D. Regulatory and business compliance costs

The joint regime facilitates greater Trans-Tasman competition in the market for patent attorney services by reducing the compliance costs for attorneys to practise across both countries by only requiring a single Trans-Tasman registration. Along with the introduction of the single trans-Tasman address for service requirement across the registrable IP rights, there are now increased business opportunities for patent attorneys to grow their income by offering their services across both Australia and New Zealand, rather than just on a national basis.

Although the joint registration scheme introduced more rigorous standards for attorneys to register and practice, especially in New Zealand, for the majority of attorneys (those who were registered to practise in both Australia and New Zealand before the scheme was implemented), their compliance costs have been minimised because they now only have a single set of legislative requirements including: one set of registration and renewal fees, continuing professional development and a single Code of Conduct applying in Australia and New Zealand.

For Australian patent attorneys who had not previously registered to practise in New Zealand, the implementation of the joint registration regime had minimal impact on their regulatory and business compliance cost to continue practising. This was because the scheme largely mirrored the existing Australian national registration scheme.

However, implementation has had a significant impact on the regulatory and business compliance costs for the minority of New Zealand patent attorneys who were only concerned with practising in New Zealand. Although they now face higher costs to practise in New Zealand compared to those costs under the registration regime of the New Zealand Patents Act 1953 (NZ), their costs would have been significantly increased as a result of the New Zealand Government's decision in 2007 to modernise the national registration scheme by closely aligning it with the Australian registration regime.

The fees associated with the regime are set through the general processes for determination of fees used by IP Australia in accordance with the Australian Government Cost Recovery Guidelines. The current application fee for registration as a patent attorney is \$350 and the current annual renewal fee for a patent attorney is \$400. The fees were last increased on 1 October 2020 by \$50 in each case following a public consultation process. The basis for the level of fees is set out in the Cost Recovery Implementation Statement 2020-21.³

Q5. How has the joint registration scheme been effective in reducing the regulatory and business compliance costs for persons practising as patent attorneys?

Q6. Should any changes be considered to further facilitate reducing compliance costs and why?

E. Business confidence in the quality and standards of service

The joint regime seeks to support the quality and standard of service provided by patent attorneys by:

- prescribing qualifications and training prior to registration;
- setting standards of conduct and ethical practice for the profession;
- requiring ongoing professional development; and
- providing a complaints and disciplinary process to address breaches of required standards of conduct and ethical practice.

We have identified five issues in this area:

1. Qualifications and training requirements to register - balancing educational and training requirements with quality of services provided;
2. Confidence in the profession's standards of service;
3. Code of Conduct and the disciplinary regime;
4. Voluntary removal from the register and the disciplinary regime; and
5. Investigative powers for the Board.

1. Qualifications and training requirements to register

Knowledge requirements, when combined with academic and work experience requirements, are intended to ensure that those registered as patent attorneys have appropriate knowledge and are competent and capable of acting independently as patent attorneys in private practice.

Candidates applying to register as patent attorneys are required to complete an accredited course of study covering nine topic groups. Currently three organisations offer accredited courses of study. Two Australian organisations cover the full set of courses, one each located in Sydney and Melbourne. Their accredited courses are available by remote learning. In New Zealand, one organisation located in Wellington provides intensive learning courses for four of the nine topic groups.

The accredited courses are offered as part of a post-graduate program of study by the three organisations and are generally provided on a full cost recovery basis. Like many other post-graduate professional qualifications, there is little or no government support for candidates.

³ <https://www.ipaustralia.gov.au/tools-resources/publications-reports/cost-recovery-implementation-statement>

The higher the educational and training standards required to qualify for registration and therefore practise as a patent attorney, the higher the cost to candidates to qualify and the fewer the number of candidates who achieve registration will be. This in turn will reduce competition in the market for patent attorney services, increasing costs to businesses and potentially creating a barrier for small businesses. Therefore, it is necessary to ensure an appropriate balance is struck which maintains sufficient quality of patent attorney services provided by those who are registered to practise whilst ensuring there is a sufficient number of registered patent attorneys to allow for competition in the market to keep costs of their services at an acceptable level.

Q7. How are the current qualifications and training requirements impacting on those wanting to register and practise as patent attorneys and, therefore, on the number of attorneys available to service the needs of innovative businesses in Australia and New Zealand?

Q8. What changes could be made to the qualifications and training requirements to, for example, increase their accessibility and reduce the time and costs to candidates to qualify for registration?

Q9. Do the regime's qualifications and training requirements strike the correct balance between ensuring quality of services provided by new entrants to the profession and the availability and affordability of patent attorney services for businesses? If not, what changes should be considered?

2. Confidence in the profession's standards of service

One way of ensuring quality and therefore confidence in the profession is through having professional development requirements that apply to all registered attorneys. Currently, this takes the form of requiring that patent attorneys complete 10 hours of Continuing Professional Education (CPE) activities per year (or 15 hours if also registered as a trade marks attorney). The Board has published guidelines regarding what activities are suitable, with the only strict requirement being that patent attorneys complete at least 1 hour of professional conduct or ethics activities, and 5 hours of activities relating to patents.⁴ Some suggestions are made regarding completing a variety of types of activities, but these are typically not strictly enforced.

Effects of the regime on quality and standards are likely to manifest slowly as newly qualified attorneys enter the profession and the cumulative effects of professional development take effect over time. The effects in the two countries may be different, noting the distinct changes required to move to a uniform standard under the regime compared to the previous approach.

The creation of a joint registration scheme providing a complaints and disciplinary process is also likely to assist in maintaining and lifting standards, but it is difficult to measure the impact on business confidence. Complaints are a potential indicator of the community's views and business confidence in the profession. However low numbers of complaints and lack of comparative data from before the joint regime, especially in New Zealand, make it problematic to draw conclusions from this data (see appendix A).

Low complaint volumes may reflect the high quality of service provided by registered attorneys, or it is possible there is a lack of knowledge of the regime and of the associated complaints process within the community.

⁴ <https://www.ttipattorney.gov.au/sites/default/files/CPE%20Guidelines.pdf>

Modern regulatory regimes generally involve an approach where most matters are addressed through education, persuasion, and support. Education campaigns and support activities would generally focus on areas of greatest risk identified through an assessment of complaints and other information regarding non-compliance.

As currently implemented, administration of the joint regime focuses primarily on regulatory compliance activities, including assessment of applications for registration and investigation of complaints. The regime only permits disciplinary action following the Board commencing disciplinary proceedings and a full hearing by the Tribunal. The Secretariat liaises with members of the public who make complaints and conducts investigations on behalf of the Board. The Secretariat then brings any matters necessary to the attention of the Board. Training has been delivered on specific issues at times, for example the launch of the *Code of Conduct for the Trans-Tasman Patents and Trade Marks Attorneys 2018* or the issuing of practice notes on ownership of copyright in patent specifications and ownership of files,⁵ but at present proactive educational activities are not undertaken on an ongoing basis.

Creating greater public awareness of the standards expected from the profession and the benefits of using a qualified patent attorney could serve to increase business confidence in the profession and encourage more businesses to use their services.

Q10. Are the current CPE requirements sufficient to ensure the quality of patent attorney services? Are there any improvements which could be made to the CPE framework?

Q11. What would be the costs and benefits of the Board and Secretariat undertaking a more coordinated and proactive approach to supporting compliance with the code of conduct by patent attorneys? How might the Board and Secretariat undertake a more coordinated and proactive approach?

3. Code of Conduct and the disciplinary regime

At the time the regime was implemented, the Australian code of conduct which applied under the Professional Standards Board also applied to New Zealand attorneys whilst a trans-Tasman code of conduct was developed. The *Code of Conduct for Trans-Tasman Patent and Trade Marks Attorneys 2018 (Code of Conduct)* came into force on 23 February 2018.⁶

The Code of Conduct sets out acceptable professional standards and can be used to determine whether an attorney has engaged in professional misconduct or unsatisfactory conduct. Penalties may apply to attorneys who are found guilty of either professional misconduct or unsatisfactory professional conduct by the Disciplinary Tribunal. The Board has responsibility for maintaining the Code of Conduct and has also published a complementary set of Guidelines for the Code of Conduct.⁷

⁵ <https://www.ttipattorney.gov.au/for-registered-attorneys/practice-notes#ownership-of-files-toc>

⁶ <https://www.legislation.gov.au/Details/F2018L00031>

⁷ https://www.ttipattorney.gov.au/sites/default/files/Guidelines_to_Code_of_Conduct_2018.pdf?acsf_files_re_direct

It should be noted that the disciplinary regime is not the only means of regulating the behaviour of patent attorneys. Both the Institute of Patent and Trade Mark Attorneys of Australia (**IPTA**) and the New Zealand Institute of Patent Attorneys (**NZIPA**) have mechanisms for disciplining their members.

The Board is currently conducting a health check of the Code of Conduct and its associated Guidelines. This health check is intended to determine whether the Code of Conduct and Guidelines are working as intended in specific areas arising from recent complaints to the Board and is not a wholesale review of the entire Code of Conduct. The outcomes of the health check will be presented to the profession in early 2022.

Q12. Is the Code of Conduct an effective mechanism for regulating attorney conduct and providing confidence in the standards of the profession?

Q13. Are there any more suitable alternatives to a Code of Conduct as a means of regulating attorney conduct?

4. Voluntary removal from the register and the disciplinary regime

During the implementation of the regime, some specific issues have arisen in relation to implementation. In particular, the application of the regime only to registered patent attorneys has raised difficulties where a person undertakes actions while registered as an attorney and then, following the Board commencing action in relation to a complaint, suspends or removes themselves from the register.

This means that questions arise regarding the jurisdiction of the Board and the Tribunal to continue to deal with any complaints or disciplinary issues regarding the actions of that person. Although, if the person suspends or removes themselves from the register they cannot continue to operate as a patent attorney, the specific issues related to the actions complained about are not addressed. There is also the potential for that person to seek reinstatement of their registration in the future without the previous complaint being addressed. Notably, similar professional conduct regimes, such as those applicable to lawyers, provide for the complaints and disciplinary regime to apply to former lawyers in relation to conduct while they were a legal practitioner. This issue has the potential to undermine the public's confidence in the regime as an effective regulatory approach.

The Arrangement could be amended to ensure that the Board and the Tribunal retain jurisdiction on matters where an attorney undertook particular action while registered, regardless of whether the attorney subsequently voluntarily suspends or removes their name from the register. A further option would be to place a bar on reregistration of attorneys where they had previously removed themselves while disciplinary proceedings were underway.

Q14. What are the costs and benefits from having the disciplinary regime apply to patent attorneys after they have either voluntarily suspended or removed themselves from the register? What might be reasonable sanctions for misconduct for attorneys who have left the profession?

Q15. What would be the costs and benefits from placing a bar on reregistration of attorneys where they have previously suspended or removed themselves from registration while disciplinary proceedings were underway? If a bar were to be imposed, what should that bar be?

5. Conduct investigations and processes

The regime provides the Board with limited investigation powers. These are primarily focussed on allowing the Board to request information from the attorney who is the subject of an investigation.

Processes providing procedural fairness, including respecting the right to freedom of expression, and ensuring complaints are dealt with as efficiently and quickly as possible are not specified. Notably, provisions in the professional regulation of lawyers provides a much greater degree of specificity and guidance around these issues, including stipulating time limits within which complaints may be made, requiring that respondents be notified of the particulars of the complaint within a certain time if an investigation commences, and specifying the time that respondents should normally be given to make submissions.

Q16. What would be the costs and benefits for the regime from providing more capacity and guidance for Board investigations?

F. Competition in the market

By reducing barriers to providing patent attorney services across the two countries, the regime promotes competition in the market for patent attorney services. The joint regime promotes Australian and New Zealand patent attorneys distinguishing themselves on standards, quality, and price of their services, rather than on their mere location. Competition can also provide a greater choice to innovative businesses when seeking an attorney to assist with patent attorney services in one or both two countries.

As discussed above, there is no evidence that directly supports any claim that the joint registration scheme has caused a hollowing out of the profession in New Zealand by patent attorneys migrating to Australia.

Demonstrating causal links to the implementation of the regime and competition in the market for attorneys registered under it is challenging, due to the relatively low volume of data, length of relevant time-frame and absence of comparative data. The presence of additional external market forces should also be considered.

Available data from IP Australia and the Intellectual Property Office of New Zealand (**IPONZ**) appears in appendices to this paper. The assessment of represented applications for standard patents and innovation patents in Australia is set out at Appendix B. Tables set out at Appendix C explore the representation of applicants to IP Australia from key trading partners in relation to patent and

innovation applications. Appendix D sets out the country of origin information for representation for patents in New Zealand.

The evidence indicates that the Trans-Tasman system has helped New Zealand attorneys make inroads into the market for patent attorney services in relation to filings for Australian patents, although use of both Australian and New Zealand attorneys in the New Zealand market has remained relatively stable. The regime therefore has promoted the regime's objectives by increasing competition in the Australian market.

The use of attorneys for applicants whose country of origin is other than Australia or New Zealand has shifted towards use of Australian attorneys for New Zealand applications. However, the implementation of the Trans-Tasman regime does not appear to have had a direct influence on the change of market share as the trend began prior to the commencement of the regime.

While the regime has increased the openness of the market, the cost of attorney services may be a barrier to engagement of attorneys. Small to medium entities (**SMEs**) continue to report difficulties in affording the services of patent attorneys.⁸

Many potential businesses may not be aware that they have the option to use patent attorneys across both countries and the price benefits this could provide for cost conscious businesses. Some businesses may have previously considered location in another jurisdiction to present practical difficulties to engagement. With increased use of technology for remote work among the community, engagement of an attorney in another country may have become a more viable and readily acceptable option, particularly if it provides the opportunity for reduced costs.

Raising awareness of the single market for trans-Tasman patent attorneys could promote the capacity to engage attorneys across both countries and the increased options this provides to consumers, as part of a wider suite of information provided to the community.

Q17. Would providing more information to businesses about the trans-Tasman regime assist in facilitating attorneys practising across both countries? If so, who should be providing this information and to whom?

Q18. What improvements to the Trans-Tasman patent attorney regime should be made to facilitate SMEs having access to more affordable patent attorney services?

G: Other issues

As part of this review, we would also be interested to hear about any other issues you have with the operation of the joint registration scheme or with the regulation of services provided by patent attorneys and what improvements to the joint registration scheme should be made.

⁸ [Patents Accessibility Review \(industry.gov.au\)](https://www.industry.gov.au/publications/patents-accessibility-review)

Q19. What other issues, if any, have you experienced with either the operation of the joint registration scheme or the services provided by patent attorneys? How might those issues be addressed?

Part C: Registered Trade Marks Attorneys in Australia

Unlike in New Zealand, in Australia trade marks attorneys are recognised and regulated as a profession. Trade marks attorneys gained recognition as a separate profession to patent attorneys in 1998, at the same time that restrictions on practicing as a trade marks agent were largely removed. There is a significant overlap between the patent and trade marks attorney professions in Australia, with 696 out of 1217 trade marks attorneys also being registered patent attorneys.

In Australia, registered trade mark attorneys have the exclusive right to use the term ‘trade marks attorney’, and only trade marks attorneys, patent attorneys, and lawyers can use the term ‘trade marks agent’. Registered trade marks and patent attorneys are afforded privileges in relation to confidentiality of communications and advice to clients, and rights of lien in relation to documents and property of a client. However, unlike patents, there is no requirement to be registered as an attorney under the regime in order to give advice or file trade mark applications so long as the terms ‘trade marks attorney’ or ‘trade marks agent’ are not used.

Under both the current Trans-Tasman IP Attorneys Board regime and its predecessor the Professional Standards Board, there are many similarities between the regulation of patent attorneys and trade marks attorneys in Australia. Like patent attorneys, trade mark attorneys must have an academic qualification, must have appropriate knowledge of intellectual property law and practice, and must meet certain character requirements. However, the qualifications and knowledge requirements are less stringent than those of patent attorneys, and there is no requirement to complete a period of supervised employment before becoming a registered attorney. The administrative aspects of the regulatory regime for trade marks attorneys, including the requirements for maintaining registration and the discipline provisions, are essentially identical to those of patent attorneys.

Because of the similarities between the regimes, submissions by trade marks attorneys in respect of the issues relating to patent attorneys raised in Part B of the paper are encouraged.

As noted at the start of the paper, the question of whether New Zealand should provide a regulatory regime for trade mark attorneys is not within the scope of this review. However, interested parties from New Zealand are encouraged to provide their views on the Australian regime for regulating trade marks attorneys based on their experience.

Q20. What are the costs and benefits of the operation of the trans-Tasman regulatory regime also encompassing regulation of trade marks attorneys in Australia?

Q21. What improvements could be made to the regulation of trade marks attorneys in Australia?

Summary of Questions

Q1. How has the joint regulatory regime impacted upon the relationship between Australia and New Zealand?

Q2. How has the joint registration scheme impacted upon the availability of patent attorney services in Australia and New Zealand?

Q3. What improvements, if any, could be made to the way in which the Board operates?

Q4. What other actions, if any, could be undertaken to improve the economies of scale in institutional arrangements under the joint registration scheme?

Q5. How has the joint registration scheme been effective in reducing the regulatory and business compliance cost for persons practicing as patent attorneys?

Q6. Should any changes be considered to further facilitate reducing compliance costs and why?

Q7. How are the current qualifications and training requirements impacting on those wanting to register and practice as patent attorneys and, therefore, on the number of attorneys available to service the needs of innovative businesses in Australia and New Zealand?

Q8. What changes could be made to the qualifications and training requirements to, for example, increase their accessibility and reduce the time and costs to candidates to qualify for registration?

Q9. Do the regime's qualifications and training requirements strike the correct balance between ensuring quality of services provided by new entrants to the profession and the availability and affordability of patent attorney services for businesses? If not, what changes should be considered?

Q10. Are the current CPE requirements sufficient to ensure the quality of patent attorney services? Are there any improvements which could be made to the CPE framework?

Q11. What would be the costs and benefits of the Board and Secretariat undertaking a more coordinated and proactive approach to supporting compliance with the code of conduct by patent attorneys? How might the Board and Secretariat undertake a more coordinated and proactive approach?

Q12. Is the Code of Conduct an effective mechanism for regulating attorney conduct and providing confidence in the standards of the profession?

Q13. Are there any more suitable alternatives to a Code of Conduct as a means of regulating attorney conduct?

Q14. What are the costs and benefits from having the disciplinary regime apply to patent attorneys after they have either voluntarily suspended or removed themselves from the register? What might be reasonable sanctions for misconduct for attorneys who have left the profession?

Q15. What would be the costs and benefits from placing a bar on reregistration of attorneys where they have previously suspended or removed themselves from registration while disciplinary proceedings were underway? If a bar were to be imposed, what should that bar be?

Q16. What would be the costs and benefits for the regime from providing more capacity and guidance for Board investigations?

Q17. Would providing more information to businesses about the trans-Tasman regime assist in facilitating attorneys practising across both countries? If so, who should be providing this information and to whom?

Q18. What improvements to the Trans-Tasman patent attorney regime should be made to facilitate SMEs having access to more affordable patent attorney services?

Q19. What other issues, if any, have you experienced with either the operation of the joint registration scheme or the services provided by patent attorneys? How might those issues be addressed?

Q20. What are the costs and benefits of the operation of the trans-Tasman regulatory regime also encompassing of regulation trade marks attorneys in Australia?

Q21. What improvements could be made to the regulation of trade marks attorneys in Australia?

APPENDIX A

Complaints Received Following Trans-Tasman Regime Implementation

Year	Number of Complaints
2017	12
2018	11
2019	8
2020	13

APPENDIX B

IP Australia Patent Data – Australian Represented Applications

Australian Represented Standard Applications

Year	Patent Attorney Country				Total Represented Australian Applications
	AU	NZ	TH	Unknown	
2010	2111	4			2115
2011	2112	1	1		2114
2012	2357	1			2358
2013	2857				2857
2014	1775			1	1776
2015	2103	2		3	2108
2016	2383	4		1	2388
2017	2294	4		1	2299
2018	2547	11			2558
2019	2462	8		1	2471
2020	2167	22		1	2190

Australian Represented Innovation Applications

Year	Patent Attorney Country			Total Australian Represented Innovation Applications
	AU	NZ	Unknown	
2010	538			538
2011	556			556
2012	649			649
2013	762			762
2014	555			555
2015	597	4	3	604
2016	614	2		616
2017	598			598
2018	646	1		647
2019	638	4		642
2020	597	2		599

APPENDIX C

IP Australia Patent Data – Non-Australian Represented Applications

Non-Australian Represented Standard Applications

Year	Patent Attorney Country												Total Non-Resident Represented Standard Applications
	AT	AU	CA	CN	GB	HK	IL	IN	NZ	SE	US	UnKn	
2010	1	22066			2		1		306		1		22377
2011		22795				1	1	1	280		4	1	23083
2012		23629	1	1				1	80			5	23717
2013		26572							18	1		4	26595
2014		23913							50			4	23967
2015		26137							123			45	26305
2016		25575							140			53	25768
2017		26039						1	281			56	26377
2018		26554		1					361			228	27144
2019		26022							583	1		301	26907
2020		25923							696			225	26844

Non-Australian Represented Innovation Applications

Year	Patent Attorney Country						Total Non-Resident Represented Innovation Applications
	AU	CN	FR	HK	NZ	Unknown	
2010	315		1	1	11		328
2011	476				9		485
2012	634	36			4		674
2013	573				2		575
2014	543				7		550
2015	688				33	3	724
2016	1079				13	2	1094
2017	776				29	3	808
2018	1012				59	5	1076
2019	726				107	3	836
2020	2800				360	3	3163

APPENDIX D

Intellectual Property Office of New Zealand Patent Data

New Zealand patents

Country of origin recorded for agents representing patents filed for applicants whose country of origin is NZ.

Year	NZ	AU	Total	Market share NZ PA	Market share AU PA
2010	1116	16	1132	99%	1%
2011	1147	25	1172	98%	2%
2012	1203	29	1232	98%	2%
2013	1128	26	1154	98%	2%
2014	1167	27	1194	98%	2%
2015	832	21	853	98%	2%
2016	742	12	754	98%	2%
2017	715	20	735	97%	3%
2018	655	16	671	98%	2%
2019	667	13	680	98%	2%
2020	653	16	669	98%	2%
2021	231	2	233	99%	1%

Australian patents

Country of origin recorded for agents representing patents filed for applicants whose country of origin is AU.

Year	NZ	AU	Total	Market share NZ PA	Market share AU PA
2010	192	477	669	29%	71%
2011	147	456	603	24%	76%
2012	107	491	598	18%	82%
2013	155	441	596	26%	74%
2014	167	609	776	22%	78%
2015	96	435	531	18%	82%
2016	113	468	581	19%	81%
2017	106	445	551	19%	81%
2018	116	458	574	20%	80%
2019	100	548	648	15%	85%
2020	130	490	620	21%	79%
2021	65	212	277	23%	77%

Other foreign patents

Country of origin recorded for agents representing patents filed for applicants whose country of origin is other than AU or NZ.

Year	NZ	AU	Total	Market share NZ PA	Market share AU PA
2010	3408	1597	5005	68%	32%
2011	3014	1897	4911	61%	39%
2012	2862	2176	5038	57%	43%
2013	2449	1985	4434	55%	45%
2014	2645	2452	5097	52%	48%
2015	2192	2476	4668	47%	53%
2016	2133	2496	4629	46%	54%
2017	1833	2634	4467	41%	59%
2018	1783	2958	4741	38%	62%
2019	1762	3183	4945	36%	64%
2020	1629	3217	4846	34%	66%
2021	786	1634	2420	32%	68%

This includes the current agent as well as the original agent at submission.