



## COVERSHEET

<b>Minister</b>	Hon Dr David Clark	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	Trans-Tasman Patent Attorney Registration Regime Review: Approval to Release Consultation Paper	<b>Date to be published</b>	23 Nov 2021

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
Oct 2021	Trans-Tasman Patent Attorney Registration Regime Review: Approval to Release Consultation Paper	Office of the Minister of Commerce and Consumer Affairs
27 Oct 2021	DEV-21-MIN-0216 Minute	Cabinet Office

### Information redacted

**No**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982 (the **OIA**). Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

## In Confidence

Office of the Minister of Commerce and Consumer Affairs

Cabinet Economic Development Committee

## Trans-Tasman Patent Attorney Registration Regime Review: Approval to Release Consultation Paper

### Proposal

- 1 This paper seeks approval to release the attached consultation paper - *Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys: Consultation Paper* (the **consultation paper**). The document seeks feedback on the Trans-Tasman patent attorney registration regime (the **TTPA regime**), and would be jointly released by the Ministry of Business, Innovation and Employment (**MBIE**) and IP Australia.

### Relation to government priorities

- 2 The review of the TTPA regime is a Government commitment under the *Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys* (the **Arrangement**).

### Background

- 3 Patent attorneys are a small profession providing specialist advice to businesses (patent attorney services) on the protection, enforcement and exploitation of intellectual property rights, and in particular about patents. Patent attorneys in New Zealand and Australia are regulated under a single TTPA regime as set out in the Arrangement.
- 4 The TTPA regime is primarily implemented through legislation in Australia. Our *Patents Act 2013* requires anyone in New Zealand holding themselves out, or practising, as a patent attorney to be registered in Australia.
- 5 The Arrangement entered into force on 24 February 2017. Australia and New Zealand must review the effectiveness of the Arrangement no later than five years after this date (i.e. by 24 February 2022).

### The TTPA regime

- 6 The TTPA regime comprises of:
  - 6.1 a single register of licensed patent attorneys administered by a Designated Manager (the Director General of IP Australia);
  - 6.2 a Trans-Tasman IP Attorneys Board (the **Board**), whose responsibilities include:

- 6.2.1 accrediting courses of study conducted by education providers or professional bodies as meeting some, or all of the knowledge requirements for a person to register and practise as a patent attorney;
  - 6.2.2 reviewing and updating the Trans-Tasman code of conduct for patent attorneys, which sets out minimum standards of ethical and professional behaviours that all licensed patent attorneys must adhere to;
  - 6.2.3 investigating and prosecuting complaints against patent attorneys;
  - 6.3 a Trans-Tasman code of conduct setting out minimum standards of ethical and professional behaviours that all registered patent attorneys must adhere to;
  - 6.4 a Trans-Tasman IP Attorneys Disciplinary Tribunal (the **Tribunal**) to hear complaints about patent attorneys and, where appropriate, sanction misconduct.
- 7 The objectives of the Arrangement are to:
- 7.1 strengthen the relationship between Australia and New Zealand;
  - 7.2 provide a joint registration regime for patent attorneys to register and practise in Australia or New Zealand and between Australia and New Zealand;
  - 7.3 allow economies of scale to be achieved in institutional arrangements for regulating patent attorney services;
  - 7.4 minimise the regulatory and business compliance costs for patent attorneys to practise in Australia or New Zealand and between Australia and New Zealand;
  - 7.5 increase business confidence in the quality and standard of service provided by patent attorneys, especially when patent attorneys provide services on a Trans-Tasman basis, and
  - 7.6 facilitate competition in the market for patent attorney services.

**Proposal to consult on the TTPA regime**

- 8 I propose that the attached consultation paper be jointly released by MBIE and IP Australia.
- 9 IP Australia are similarly seeking approval from the Australian Minister for Industry, Science and Technology to release the consultation paper for public consultation.

## Issues raised in the discussion document

- 10 The aim of the review is to assess the effectiveness of the Arrangement with a view to identifying improvements to the TTPA regime. This includes an assessment of the administration of the joint registration regime and the roles and functions of the Board and the Tribunal against the objectives of the Arrangement.
- 11 The consultation document discusses each of the objectives of the Arrangement in turn and identifies potential issues that might be preventing those objectives from being fully realised.
- 12 The key issues highlighted in the consultation paper are:
  - 12.1 *The distribution of patent attorneys* - prior to the commencement of the TTPA regime, concerns were expressed in New Zealand that implementation of the regime would cause a “hollowing out” of the profession in New Zealand. The data shows that size of the profession in New Zealand has remained stable at around 205 registered patent attorneys.<sup>1</sup>
  - 12.2 *Qualifications and training requirements to register as a patent attorney* - candidates applying to register as patent attorneys are required to complete an accredited course of study covering nine topic groups. Currently, three tertiary education establishments (in Wellington, Melbourne and Sydney) offer accredited courses of study. Issues have been raised regarding:
    - 12.2.1 limited access to accredited courses of study and the cost of those courses (being expensive post-graduate courses run largely on a cost recovery basis with little, or no, government support for candidates to help meet the costs of those courses); and
    - 12.2.2 whether the right balance has been struck between education and training requirements and, therefore, the costs to candidates to qualify for registration, and the expected quality and standards of service from new entrants into the profession.
  - 12.3 *Voluntary removal from the register and the disciplinary regime* - Because the regime only applies to registered patent attorneys, a person can avoid disciplinary action by voluntarily removing themselves from the register after the Board commences an investigation into a complaint.

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<sup>1</sup> There is no data around the optimal number of patent attorneys required to support an innovative economy. The size of the profession, being a demand driven service industry, will change over time based upon changes in rates of innovation occurring domestically and overseas.

12.4 *Investigative powers* - the regime only provides the Board with limited investigation powers. Under the current regime, processes providing procedural fairness to ensure complaints are dealt with as efficiently and quickly as possible are not specified. Feedback from submissions will be used to inform policy decisions.

13 Submissions received on the consultation paper will to help determine whether any improvements to the TTPA regime are needed and, if so, how they should be implemented. This response will be coordinated with IP Australia. I intend to report back to Cabinet on the agreed outcomes of the review, and seek approval for any changes to the TTPA regime by 31 May 2022.

### **Financial Implications**

14 There are no financial implications from the release of the consultation paper. IP Australia is primarily responsible for administering the TTPA regime, and its costs are recovered through application and registration renewal fees paid to it by patent attorneys.

### **Legislative Implications**

15 The release of the consultation paper does not raise any legislative implications.

### **Impact Analysis**

#### **Regulatory Impact Statement**

16 A regulatory impact statement does not apply to the release of the consultation paper, as it does not involve the potential introduction of new legislation, or changes to or the repeal of existing legislation.

### **Population Implications**

17 The proposals in this paper are not expected to have a significant impact on specific population groups.

### **Human Rights**

18 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### **Consultation**

19 The following agencies have been consulted on this Cabinet paper and the consultation paper:

19.1 Ministry of Foreign Affairs and Trade;

19.2 Ministry of Justice;

19.3 Te Puni Kōkiri; and

19.4 Treasury.

20 The Department of Prime Minister and Cabinet (Policy Advisory Group) was informed.

### Communications

21 I propose to release the consultation paper in October 2021 for a six week public consultation period. The consultation would be announced by the release of a joint media statement with the Australian Minister for Industry, Science and Technology.

### Proactive Release

22 I intend to release a copy of this paper in whole within 30 business days of decisions being confirmed by Cabinet.

### Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** the *Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys* (the **Arrangement**), which sets out a single Trans-Tasman patent attorney registration regime (the **TTPA regime**), entered into force on 24 February 2017;
- 2 **note** that the Arrangement requires Australia and New Zealand to carry out review of the effectiveness of TTPA regime no later than 5 years after it has entered into effect (24 February 2022);
- 3 **note** that the attached consultation paper *Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys: Consultation paper* (the **consultation paper**) seeks feedback from the Australian and New Zealand public whether any improvements to the TTPA regime should be made;
- 4 **note** that the consultation paper would be jointly released by IP Australia and the Ministry of Business, Innovation and Employment;
- 5 **agree** to release the consultation paper in October 2021 for a six week public consultation period;
- 6 **authorise** the Minister of Commerce and Consumer Affairs to make editorial and minor content changes to the consultation paper, in consultation with his Australian counterpart, prior to its public release;
- 7 **invite** the Minister of Commerce and Consumer Affairs to report back to the Cabinet Economic Development Committee on the outcome of the consultation by 31 May 2022;

**I N C O N F I D E N C E**

- 8 **note** that the Minister of Commerce and Consumer Affairs and the Australian Minister for Industry, Science and Technology will issue a joint media statement on the release of the consultation paper;
- 9 **agree** that the Minister of Commerce and Consumer Affairs proactively release a copy of this paper within 30 working days of decisions being confirmed by Cabinet.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs

**Appendix**

Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys: Consultation Paper