



Australian Government



New Zealand Government

Te Kāwanatanga o Aotearoa

Trans-Tasman IP Attorneys Board

Listed Groups, Conflicts of Interest, and the Review of the Code of Conduct

FICPI Australia Annual Conference, 29 July 2017

Professor Andrew Christie
Melbourne Law School

Outline

Review of Code of Conduct

- indicative timeline

Code of Conduct

- purpose and effect
- form

Conflict of Interest Provisions (and listed firms)

- disclosure of ownership status
- double employment
- independence of operation

Indicative Timeline for Review

Timing	Task
2016	
late Sept	Board seeks views of prof. orgs & major firms on listed group scenario
mid Nov	Board commences review of listed group scenario and conflicts of interest
2017	
early Feb	Consultation with prof. orgs & major firms
early Mar	Board commences review of entire Code
mid Apr	Consultation Paper published for consideration by stakeholders
early Jun	Receipt of submissions on Consultation Paper
early July	Board considers submissions, resolves key issues
late Aug	Draft new Code published for consideration by stakeholders
mid Sept	Submissions on draft new Code received
mid Oct	Board considers submissions, revises new Code
early Nov	New Code finalised and published
2018	
late Feb	New Code operative

Purpose and Effect of the Code (in Context)

	Non-statutory law	
Law	Fiduciary duty of loyalty; Duty of confidentiality	Tort of negligence
Purpose	require fiduciaries to be loyal; require confidants to keep secrets	require professionals to act with care
Effect - remedies for non-compliance	injunction, damages	injunction, damages



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Purpose and Effect of the Code (in Context)

	Non-statutory law		Statutory Law	
Law	Fiduciary duty of loyalty; Duty of confidentiality	Tort of negligence	Corporations Act	Australian Consumer Law
Purpose	require fiduciaries to be loyal; require confidants to keep secrets	require professionals to act with care	regulate dealings of corporations with shareholders, investors, etc	regulate dealings of traders with consumers
Effect - remedies for non-compliance	injunction, damages	injunction, damages	injunction, damages, penalty, imprisonment	injunction, damages, penalty, imprisonment

Purpose and Effect of the Code (in Context)

	Non-statutory law		Statutory Law		Code
Law	Fiduciary duty of loyalty; Duty of confidentiality	Tort of negligence	Corporations Act	Australian Consumer Law	Attorney Code of Conduct
Purpose	require fiduciaries to be loyal; require confidants to keep secrets	require professionals to act with care	regulate dealings of corporations with shareholders, investors, etc	regulate dealings of traders with consumers	set standards of professional conduct of registered attorneys
Effect - remedies for non-compliance	injunction, damages	injunction, damages	injunction, damages, penalty, imprisonment	injunction, damages, penalty, imprisonment	cancellation or suspension of registration

Form of the Code

Rules (“Hard Law”)

Binding

- authoritative of the professional conduct standards to be met

General principles

- relatively brief, high level

Contained in Code

- statutory instrument – requires parliamentary approval

Form of the Code

Rules (“Hard Law”)	Guidance (“Soft Law”)
Binding <ul style="list-style-type: none">• authoritative of the professional conduct standards to be met	Guiding <ul style="list-style-type: none">• informative of what conduct meets the standards in practice
General principles <ul style="list-style-type: none">• relatively brief, high level	Particular examples <ul style="list-style-type: none">• more detailed, specific
Contained in Code <ul style="list-style-type: none">• statutory instrument – requires parliamentary approval	Contained outside Code <ul style="list-style-type: none">• Board document – parliamentary approval not required

(Non-Confidential) Respondents to Consultation Paper

Prof. Rep. Org.	Indiv. / Small Firm	Med. / Lge Non-Listed Firm	Listed Firm Group	Client
FICPI	Ellis Terry	FB Rice	QIP	ResMed
IPTA	Fraser Old	POF	XIP	
NZIPA	IPiphany			
	PL Berry			
	Wadeson			
	Ana Penteado			
	Bob Kelson			
	Franke Hyland			
	John Smith			

(Non-Confidential) Responses to Consultation Paper

**Non-contentious –
general agreement**

TT consequential
amendments to
Code

Equal application of
Code to all
attorneys

Recognition of
potential for
common ownership

(Non-Confidential) Responses to Consultation Paper

Non-contentious – general agreement	Non-contentious – mixed views
TT consequential amendments to Code	Guidance on Professional Conduct standards
Equal application of Code to all attorneys	Guidance on independence of operation
Recognition of potential for common ownership	Guidance on resolution of conflicts
	Disclosure of ownership status

(Non-Confidential) Responses to Consultation Paper

Non-contentious – general agreement	Non-contentious – mixed views	Contentious – contrary views
TT consequential amendments to Code	Guidance on Professional Conduct standards	Recognition that independence possible in a group
Equal application of Code to all attorneys	Guidance on independence of operation	Double Employment (non-contentious) permissible with consent
Recognition of potential for common ownership	Guidance on resolution of conflicts	Double Employment (contentious) prohibited
	Disclosure of ownership status	

(Non-Confidential) Responses to Consultation Paper

Non-contentious – general agreement	Non-contentious – mixed views	Contentious – contrary views	Other proposals
TT consequential amendments to Code	Guidance on Professional Conduct standards	Recognition that independence possible in a group	Further TT amendments; Standards on practice matters
Equal application of Code to all attorneys	Guidance on independence of operation	Double Employment (non-contentious) permissible with consent	Amendments to s.19; Recognition of Fiduciary Duties
Recognition of potential for common ownership	Guidance on resolution of conflicts	Double Employment (contentious) prohibited	Exemption for in-house attorneys
	Disclosure of ownership status		Avoidance of regulatory conflict

(Non-Confidential) Responses to Consultation Paper

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