

EXPOSURE DRAFT



EXPOSURE DRAFT (21 April 2016)

If you have any comments on this exposure draft, they should be sent to consultation@ipaustralia.gov.au at IP Australia by 24 June 2016.

Intellectual Property Legislation Amendment (Single Economic Market) Regulation 2016

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 2016

Peter Cosgrove
Governor-General

By His Excellency's Command

Christopher Pyne [DRAFT ONLY—NOT FOR SIGNATURE]
Minister for Industry, Innovation and Science

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1 Name

This is the *Intellectual Property Legislation Amendment (Single Economic Market) Regulation 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as Schedule 4 to the <i>Intellectual Property Laws Amendment Act 2015</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Designs Act 2003*;
- (b) the *Intellectual Property Laws Amendment Act 2015*;
- (c) the *Patents Act 1990*;
- (d) the *Plant Breeder's Rights Act 1994*;
- (e) the *Trade Marks Act 1995*;
- (f) the *Trans-Tasman Proceedings Act 2010*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Single economic market amendments relating to patents

Schedule 1—Single economic market amendments relating to patents

Patents Regulations 1991

1 Subregulation 1.3(1) (definition of *Disciplinary Tribunal*)

Repeal the definition, substitute:

Disciplinary Tribunal means the Trans-Tasman IP Attorneys Disciplinary Tribunal established by regulation 20.61.

2 Subregulation 1.3(1) (definition of *former attorneys Regulations*)

Repeal the definition, substitute:

former attorneys Regulations means the Patent Attorneys Regulations as in force under the 1952 Act immediately before 30 April 1991.

3 Subregulation 1.3(1)

Insert:

New Zealand has the meaning given by section 29 of the Interpretation Act 1999 of New Zealand, as in force at the commencement of this definition.

ordinarily resident: a person is taken to be ordinarily resident in a country if:

- (a) the person has his or her home in that country; or
- (b) that country is the country of his or her permanent abode even though he or she is temporarily absent from that country.

However, the person is taken not to be so resident if he or she resides in that country for a special or temporary purpose only.

Panel Chair, in relation to a Panel of the Disciplinary Tribunal, means:

- (a) the President; or
- (b) if the President is unable to perform his or her functions in proceedings of the Panel because of a conflict of interest—the person appointed under subregulation 20.64(2) to be the Panel Chair for the proceedings.

Panel of the Disciplinary Tribunal means a Panel constituted under regulation 20.36 or 20A.11.

President means the President of the Disciplinary Tribunal.

Tribunal member means a member of the Disciplinary Tribunal and includes the President.

4 Subparagraph 3.2C(2)(a)(i)

After “Australia”, insert “or New Zealand”.

5 Subparagraph 3.2C(2)(a)(ii)

Omit “another”, substitute “an”.

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6 Subparagraph 3.2C(2)(a)(ii)

Omit “; and”, substitute “; or”.

7 At the end of paragraph 3.2C(2)(a)

Add:

- (iii) an address for service in New Zealand to which it is practicable and reasonable for a person providing mail delivery services to deliver mail; and

8 After regulation 20.1A

Insert:

20.1B Performance of functions and exercise of powers

- (1) A function that is conferred on a person or body under this Chapter may be exercised in Australia or New Zealand.
- (2) A power that is conferred on a person or body under this Chapter may be exercised in Australia or New Zealand.
- (3) For the purposes of this Chapter and subject to regulation 20.1C, it is immaterial whether an act or omission mentioned in this Chapter took place in New Zealand.
- (4) For the purposes of this Chapter and subject to regulation 20.1C, it is immaterial whether a matter mentioned in this Chapter concerns something that took place in New Zealand.

20.1C Conduct in New Zealand does not constitute an offence under this Chapter

A person is not liable to be prosecuted for an offence against these Regulations if the act or omission constituting the offence occurred in New Zealand.

9 Subregulation 20.1(1)

Omit “(1) In”, substitute “In”.

10 Subregulation 20.1(1) (definition of *Board*)

Repeal the definition.

11 Subregulation 20.1(1)

Insert:

Board Chair means the Chair of the Board mentioned in paragraph 227A(2A)(a) of the Act.

12 Subregulation 20.1(1) (definition of *Chairperson*)

Repeal the definition.

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13 Subregulation 20.1(1)

Insert:

NZQF means the New Zealand Qualifications Framework established under section 248 of the Education Act 1989 of New Zealand.

14 Subregulation 20.1(2)

Repeal the subregulation.

15 Paragraph 20.3(1)(a)

Repeal the paragraph.

16 Paragraph 20.6(1)(a)

Omit “an AQF qualification from the higher education sector”, substitute “a level 5 or higher AQF, or NZQF, qualification”.

17 Paragraph 20.6(1)(b)

Omit “an AQF qualification from the higher education sector”, substitute “a level 5 or higher AQF, or NZQF, qualification”.

18 Subregulations 20.6(2) and (3)

After “AQF”, insert “or NZQF”.

19 Paragraph 20.10(1)(a)

After “employed”, insert “in Australia or New Zealand, or in both countries,”.

20 Subparagraph 20.10(1)(a)(ii)

Omit “in Australia”, substitute “in relation to Australia and New Zealand”.

21 Subparagraph 20.10(1)(a)(iii)

Omit “in other”, substitute “in relation to other”.

22 Subparagraph 20.10(1)(a)(iii)

After “Australia”, insert “and New Zealand”.

23 Subregulation 20.10(1) (example)

Repeal the example, substitute:

Note: Examples of major trading partners for subparagraph (1)(a)(iii) are as follows:

- (a) European Union;
- (b) Japan;
- (c) People’s Republic of China;
- (d) Republic of Korea;
- (e) United States of America.

24 After subregulation 20.10(2) (before the note)

Insert:

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- (3) For subregulation (1), a person is *employed in Australia* only if the person is, in accordance with the terms of his or her employment, required to undertake (and does undertake) the duties of his or her employment in Australia.
- (4) For subregulation (1), a person is *employed in New Zealand* only if the person is, in accordance with the terms of his or her employment, required to undertake (and does undertake) the duties of his or her employment in New Zealand.

25 Subregulation 20.12(1)

Repeal the subregulation, substitute:

- (1) An offence against any of the following Acts is a prescribed offence for paragraph 198(4)(e) of the Act:
 - (a) the Act;
 - (b) the *Designs Act 2003*;
 - (b) the *Plant Breeder's Rights Act 1994*;
 - (c) the *Trade Marks Act 1995*;
 - (d) the *Designs Act 1953 of New Zealand*;
 - (e) the *Patents Act 1953 of New Zealand*;
 - (f) the *Patents Act 2013 of New Zealand*;
 - (g) the *Plant Variety Rights Act 1987 of New Zealand*;
 - (h) the *Trade Marks Act 2002 of New Zealand*.

26 Paragraph 20.28B(4)(c)

Omit “the Disciplinary”, substitute “a Panel of the Disciplinary”.

27 Paragraph 20.28B(5)(c)

Omit “Disciplinary Tribunal”, substitute “President”.

28 Subregulations 20.35(1) and (3)

Omit “Disciplinary Tribunal”, substitute “President”.

29 Regulation 20.36

Repeal the regulation, substitute:

20.36 Panel of the Disciplinary Tribunal to be constituted

- (1) Except as otherwise provided by this Part, the Disciplinary Tribunal’s functions and powers in relation to disciplinary proceedings under this Part are to be performed and exercised by a Panel of the Disciplinary Tribunal.
- (2) A Panel of the Disciplinary Tribunal is to be constituted by:
 - (a) a Panel Chair; and
 - (b) 2 other members determined by the Panel Chair under subregulation (3).
- (3) The Panel Chair is to determine, in writing, the other members of the Disciplinary Tribunal who are to constitute the Panel that is to conduct the disciplinary proceedings.

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- (4) Subject to subregulation 20.36E(5), if disciplinary proceedings are commenced against a registered patent attorney who is ordinarily resident in Australia or New Zealand, one of the members of the Panel that is conducting the proceedings must also be ordinarily resident in the same country as the registered patent attorney.

Note: Regulation 20.64 sets out requirements relating to the disclosure of conflicts of interest.

20.36A Meetings of Panel of Disciplinary Tribunal

- (1) The Panel Chair of a Panel of the Disciplinary Tribunal must:
 - (a) convene such meetings of the Panel as the Panel Chair considers necessary for the purpose of conducting disciplinary proceedings being heard by the Panel; and
 - (b) preside at all meetings of the Panel.
- (2) Subject to paragraph 20.36D(2)(a) and subregulation 20.36E(5), all members of a Panel of the Disciplinary Tribunal must be present at a meeting of the Panel.
- (3) A question arising at a meeting of a Panel of the Disciplinary Tribunal must be determined by a majority of the votes of the members of the Panel present and voting.
- (4) However, if, in accordance with paragraph 20.36D(2)(a) or subregulation 20.36E(5), a hearing of proceedings is continued with 2 members of a Panel of the Disciplinary Tribunal, questions arising at the hearing must be determined by a unanimous vote of the 2 members.

20.36B Procedure of Panel of Disciplinary Tribunal

- (1) Subject to this Part, the procedures for convening meetings of a Panel of the Disciplinary Tribunal and for the conduct of business by a Panel of the Disciplinary Tribunal are as the Panel Chair determines.
- (2) Proceedings before the Panel are to be conducted quickly and informally, while allowing for proper consideration of the matter before the Panel.
- (3) The Panel is not bound by the rules of evidence but may be informed on any matter in the manner it chooses.
- (4) The Panel may take evidence on oath or on affirmation and, for that purpose, the Panel Chair may administer an oath or affirmation.

20.36C Panel Chair unavailable to complete hearing

- (1) This regulation applies if:
 - (a) a hearing of proceedings in relation to a particular matter has been commenced or completed by a Panel of the Disciplinary Tribunal; and
 - (b) before the matter has been determined, the Panel Chair has:
 - (i) ceased to be a member; or
 - (ii) for any reason, ceased to be available as a member of the Panel.
- (2) The matter is to be reheard by a new Panel constituted in accordance with regulation 20.36.

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- (3) The new Panel may, for the purposes of performing or exercising the Disciplinary Tribunal's functions or powers in relation to that matter, have regard to any record of the proceedings before the Panel as previously constituted for the purposes of hearing that matter.

20.36D Member other than the Panel Chair unavailable to complete hearing

- (1) This regulation applies if:
 - (a) a hearing of proceedings in relation to a particular matter has been commenced or completed by a Panel of the Disciplinary Tribunal; and
 - (b) before the matter has been determined, one of the members (other than the Panel Chair) constituting the Panel has:
 - (i) ceased to be a member; or
 - (ii) for any reason, ceased to be available as a member of the Panel.
- (2) Subject to regulation 20.36E, the Panel Chair may determine that:
 - (a) the hearing and determination, or the determination, of the matter is to be completed by the Panel constituted by the remaining members of the Panel; or
 - (b) the matter is to be reheard by a new Panel constituted in accordance with regulation 20.36.
- (3) If a matter is reheard under paragraph (2)(b), the new Panel may, for the purposes of performing or exercising the Disciplinary Tribunal's functions or powers in relation to that matter, have regard to any record of the proceedings before the Panel as previously constituted for the purposes of hearing that matter.

20.36E No member ordinarily resident in same country as registered patent attorney subject to proceedings

- (1) This regulation applies if:
 - (a) a hearing of proceedings in relation to a particular matter has been commenced or completed by a Panel of the Disciplinary Tribunal; and
 - (b) before the matter has been determined, one of the members (other than the Panel Chair) constituting the Panel has:
 - (i) ceased to be a member; or
 - (ii) for any reason, ceased to be available as a member of the Panel; and
 - (c) the registered patent attorney who is subject to the proceedings is ordinarily resident in Australia or New Zealand; and
 - (d) neither of the remaining members of the Panel is ordinarily resident in the same country as the registered patent attorney who is subject to the proceedings.
- (2) The Panel Chair must, as soon as practicable, give the registered patent attorney notice in writing that:
 - (a) one of the members constituting the Panel has ceased to be, or to be available as, a member of the Panel; and
 - (b) neither of the remaining members is ordinarily resident in the same country as the registered patent attorney; and
 - (c) the registered patent attorney may, within the period specified in the notice:

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- (i) elect to have the matter completed by the Panel constituted by the remaining members of the Panel; or
 - (ii) elect to have the matter reheard by a new Panel constituted in accordance with regulation 20.36.
- (3) An election under paragraph (2)(c) must be in writing and given to the Panel Chair within the period specified in the notice.
 - (4) The period specified in the notice must be not less than 21 days after the day on which the notice is given.
 - (5) Despite subregulation 20.36(4), if the registered patent attorney elects to have the matter completed by the Panel constituted by the remaining members of the Panel, the Panel constituted by the remaining members may hear and determine, or determine, the matter.
 - (6) If the Panel Chair does not receive an election within the period specified in the notice or such longer period as the Panel Chair allows, the Panel Chair must arrange for the matter to be reheard by a new Panel constituted in accordance with regulation 20.36.
 - (7) If the matter is reheard in accordance with subparagraph (2)(c)(ii) or subregulation (6), the new Panel may, for the purposes of performing or exercising the Disciplinary Tribunal's functions or powers in relation to that matter, have regard to any record of the proceedings before the Panel as previously constituted for the purposes of hearing that matter.

30 Subregulations 20.37(1) and (2)

Repeal the subregulations, substitute:

- (1) As soon as practicable after receiving a notice under regulation 20.35, the Panel Chair of a Panel of the Disciplinary Tribunal must:
 - (a) fix a day, time and place to hear the charges set out in the notice; and
 - (b) notify the registered patent attorney and the Board of that day, time and place.

31 Subregulation 20.38(1)

After "before", insert "a Panel of".

32 Subregulation 20.38(2)

Omit "If the Disciplinary Tribunal", substitute "If the Panel Chair of a Panel of the Disciplinary Tribunal".

33 Subregulation 20.38(2)

Omit "Tribunal may", substitute "Panel Chair may".

34 Subparagraphs 20.38(2)(b)(i) and (ii)

Omit "Tribunal", substitute "Panel".

35 Regulation 20.39 (heading)

Repeal the heading, substitute:

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20.39 Representation before Panel of Disciplinary Tribunal

36 Subregulation 20.39(1)

Omit “the hearing of proceedings before the Disciplinary Tribunal”, substitute “a hearing of proceedings before a Panel of the Disciplinary Tribunal”.

37 Subregulation 20.39(2)

Omit “Disciplinary Tribunal”, substitute “Panel Chair”.

38 Subregulation 20.39(3)

Omit “Disciplinary Tribunal”, substitute “Panel”.

39 Subregulation 20.39(3)

Omit “that Tribunal”, substitute “the Panel Chair”.

40 Subregulation 20.40(1)

Omit “the Disciplinary Tribunal, the Tribunal may, by instrument in writing signed by the person constituting the Tribunal”, substitute “a Panel of the Disciplinary Tribunal, the Panel Chair may, by written instrument signed by the Panel Chair”.

41 Paragraphs 20.40(1)(a) and (b)

Omit “Tribunal”, substitute “Panel”.

42 Regulation 20.41 (heading)

Repeal the heading, substitute:

20.41 Offences by persons appearing before a Panel of Disciplinary Tribunal

43 Subregulation 20.41(1)

After “before”, insert “a Panel of”.

44 Paragraph 20.41(1)(c)

Omit “Tribunal”, substitute “Panel”.

45 Subparagraph 20.41(2)(a)(ii)

Omit “Disciplinary Tribunal”, substitute “Panel Chair”.

46 Paragraph 20.41(2)(b)

Omit “Tribunal”, substitute “Panel Chair”.

47 Subparagraph 20.41(3)(a)(ii)

After “before”, insert “a Panel of”.

48 Subparagraph 20.41(3)(a)(iii)

After “allowances”, insert “in accordance with Part 2 of Schedule 8”.

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49 Paragraph 20.41(3)(b)

Repeal the paragraph.

50 Paragraph 20.41(4)(b)

Omit “paragraph (3)(b)”, substitute “subparagraph (3)(a)(iii)”.

51 Paragraph 20.41(5)(b)

After “before”, insert “a Panel of”.

52 Regulation 20.42 (heading)

Repeal the heading, substitute:

20.42 Protection of certain persons

53 Subregulation 20.42(1)

Repeal the subregulation, substitute:

- (1) A person who is a member of a Panel of the Disciplinary Tribunal conducting a hearing of disciplinary proceedings under this Part has, in the performance of his or her duties as a member of the Panel, the same protection and immunity as a Justice of the High Court.

54 Subregulations 20.42(3) and (4)

After “before”, insert “a Panel of”.

55 Regulation 20.43 (heading)

Repeal the heading, substitute:

20.43 Decision of Panel of Disciplinary Tribunal

56 Subregulations 20.43(1) and (2)

After “If”, insert “a Panel of”.

57 Subregulation 20.43(3)

After “If”, insert “a Panel of”.

58 Subregulation 20.43(3)

Omit “that Tribunal”, substitute “it”.

59 Subregulation 20.43(4)

After “If”, insert “a Panel of”.

60 Subregulation 20.43(4)

Omit “that Tribunal”, substitute “it”.

61 Subregulation 20.44(1)

After “If”, insert “a Panel of”.

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62 Subregulation 20.44(2)

Omit “Disciplinary Tribunal”, substitute “Panel”.

63 Subregulation 20.44(3)

Omit “Disciplinary Tribunal”, substitute “Panel”.

64 Paragraph 20.44(3)(a)

Omit “Tribunal”, substitute “Panel”.

65 Subregulation 20.44(4)

Omit “Disciplinary Tribunal”, substitute “Panel”.

66 Subregulation 20.45(1)

After “if”, insert “a Panel of”.

67 Subregulation 20.45(2)

Omit “Disciplinary Tribunal”, substitute “Panel”.

68 Subregulation 20.45(3)

Omit “Disciplinary Tribunal”, substitute “Panel”.

69 Paragraph 20.45(3)(a)

Omit “Tribunal”, substitute “Panel”.

70 Regulation 20.46

Omit “the Disciplinary Tribunal”, substitute “a Panel of the Disciplinary Tribunal”.

71 Regulation 20.46

Omit “that Tribunal”, substitute “the Panel”.

72 Regulation 20.47

After “If”, insert “a Panel of”.

73 Regulation 20.47

Omit “that Tribunal”, substitute “the Panel”.

74 Regulation 20.48

Repeal the regulation, substitute:

20.48 Matters that may be considered in determining penalties

- (1) In deciding what action to take in relation to a registered patent attorney under regulation 20.44 or 20.45, a Panel of the Disciplinary Tribunal may take into account any findings about the conduct of the attorney in any other disciplinary proceedings:
 - (a) under these Regulations; or
 - (b) under the former attorneys Regulations.

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(2) For subregulation (1), it is immaterial when the findings were made.

75 Regulation 20.49 (heading)

Repeal the heading, substitute:

20.49 Findings of Panel of Disciplinary Tribunal

76 Subregulation 20.49(1)

After “If”, insert “a Panel of”.

77 Subregulation 20.49(1)

Omit “the Tribunal” (wherever occurring), substitute “the Panel”.

78 Subregulation 20.49(4)

Omit “Disciplinary Tribunal”, substitute “Panel”.

79 Subregulation 20.49(4)

Omit “that Tribunal”, substitute “the Panel”.

80 Regulation 20.50 (heading)

Repeal the heading, substitute:

20.50 Notification and publication of decisions of Panel of Disciplinary Tribunal

81 Regulation 20.50

Omit “The Disciplinary Tribunal must, within 14 days after making a decision under regulation 20.44, 20.45, 20.46 or 20.47”, substitute “Within 14 days after a Panel of the Disciplinary Tribunal makes a decision under regulation 20.44, 20.45, 20.46 or 20.47, the Panel must”.

82 Subparagraph 20.50(a)(i)

Omit “Tribunal”, substitute “Panel”.

83 Paragraph 20.50(c)

Omit “Tribunal”, substitute “Panel”.

84 Subregulation 20.51(1)

Omit “under paragraph 20.44(1)(a), the Disciplinary Tribunal”, substitute “by a Panel of the Disciplinary Tribunal under paragraph 20.44(1)(a), the Panel Chair”.

85 Subregulation 20.51(2)

Omit “under paragraph 20.44(1)(b) or 20.45(1)(a), the Disciplinary Tribunal”, substitute “by a Panel of the Disciplinary Tribunal under paragraph 20.44(1)(b) or 20.45(1)(a), the Panel Chair”.

86 Subregulation 20.51(3)

After “The”, insert “Panel Chair of a Panel of the”.

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87 Paragraph 20.52(3)(b)

After “that the”, insert “Panel Chair of a relevant Panel of the”.

88 Division 1 of Part 10 of Chapter 20 (heading)

Repeal the heading, substitute:

Division 1—Trans-Tasman IP Attorneys Board

89 Regulations 20.54 and 20.55

Repeal the regulations.

90 Subregulation 20.56(1)

After “Board”, insert “mentioned in paragraph 227A(2A)(a), (d) or (e) of the Act”.

91 Subregulation 20.56(2)

Omit “remove the Chairperson of the Board if the Chairperson”, substitute “terminate the appointment of the Board Chair if the Board Chair”.

92 Paragraph 20.56(2)(a)

Omit “under regulation 20.60”.

93 Paragraph 20.56(2)(b)

After “Australia”, insert “or New Zealand”.

94 Paragraphs 20.56(2)(c) and (e)

Omit “Chairperson of the Board”, substitute “Board Chair”.

95 Subregulation 20.56(3)

Omit “remove a member of the Board”, substitute “terminate the appointment of a member of the Board mentioned in paragraph 227A(2A)(d) or (e) of the Act”.

96 Paragraph 20.56(3)(a)

Omit “Chairperson”, substitute “Board Chair”.

97 Paragraph 20.56(3)(b)

After “Australia”, insert “or New Zealand”.

98 Subregulation 20.57(2)

Omit “Chairperson”, substitute “Board Chair”.

99 Subregulations 20.58(1), (2) and (3)

Omit “Chairperson”, substitute “Board Chair”.

100 Regulation 20.59

Omit “At”, substitute “(1) At”.

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101 At the end of regulation 20.59

Add:

- (2) One of the members of the majority must be ordinarily resident in Australia and one of the members of the majority must be ordinarily resident in New Zealand.

102 Regulation 20.60

Repeal the regulation.

103 Division 2 of Part 10 of Chapter 20 (heading)

Repeal the heading, substitute:

Division 2—Trans-Tasman IP Attorneys Disciplinary Tribunal

104 Regulation 20.61

Repeal the regulation, substitute:

20.61 Establishment of the Trans-Tasman IP Attorneys Disciplinary Tribunal

The Trans-Tasman IP Attorneys Disciplinary Tribunal is established.

105 After regulation 20.61

Insert:

20.61A Functions of Disciplinary Tribunal

The functions of the Disciplinary Tribunal are to hear and determine disciplinary proceedings commenced by the Board:

- (a) against a registered patent attorney in accordance with Part 8 of this Chapter or Part 5 of Chapter 20A; and
- (b) against a registered trade marks attorney (within the meaning of the *Trade Marks Act 1995*) in accordance with Division 6 of Part 20 of the *Trade Marks Regulations 1995* or Division 5 of Part 20A of those Regulations.

106 Regulation 20.62 (heading)

Repeal the heading, substitute:

20.62 Membership of the Disciplinary Tribunal etc.

107 Subregulation 20.62(1)

Repeal the subregulation, substitute:

- (1) The Disciplinary Tribunal consists of the following members:
 - (a) a President;
 - (b) at least 2 other members.
- (1A) Each Tribunal member is to be appointed by the Minister in writing on a part-time basis.

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108 Subregulations 20.62(3) and (4)

Omit “person so appointed”, substitute “Tribunal member”.

109 Subregulation 20.62(5)

Omit “remove a person so appointed from office”, substitute “terminate the appointment of a Tribunal member”.

110 Subregulation 20.62(6)

Omit “person so appointed”, substitute “Tribunal member”.

111 Paragraph 20.62(6)(b)

After “Australia”, insert “or New Zealand”.

112 Subregulation 20.62(6)

Omit “remove the person from office”, substitute “terminate the Tribunal member’s appointment”.

113 Regulations 20.63, 20.64 and 20.65

Repeal the regulations, substitute:

20.63 Eligibility for appointment as Tribunal member

President

- (1) A person is not eligible to be appointed as President unless the person is enrolled as a legal practitioner (however described) in Australia or New Zealand and has been so enrolled for at least 7 years.

Other Tribunal members

- (2) A person is not eligible to be appointed as a Tribunal member (other than the President) unless the person is:
 - (a) a registered patent attorney in Australia or New Zealand; or
 - (b) a person who was, but is no longer, registered as a patent attorney in Australia or New Zealand; or
 - (c) a registered trade marks attorney (within the meaning of the *Trade Marks Act 1995*); or
 - (d) a person who was, but is no longer, a registered trade marks attorney (within the meaning of that Act).
- (3) A person is not eligible for appointment as a Tribunal member unless the person is an individual.

20.63A Acting President

- (1) The Minister may, in writing, appoint a person to act as the President:
 - (a) during a vacancy in the office of President (whether or not an appointment has been previously made to the office); or
 - (b) during any period, or during all periods, when the President:
 - (i) is absent from duty or from Australia and New Zealand; or

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- (ii) is, for any reason, unable to perform the duties of the office.
- (2) A copy of the instrument of appointment must be published in the *Official Journal*.
- (3) The Minister:
 - (a) may terminate the appointment at any time; and
 - (b) must terminate the appointment if the person appointed fails, without reasonable excuse, to disclose a conflict of interest in accordance with regulation 20.64.
- (4) A person is not eligible for appointment to act as President unless the person is eligible for appointment as President under subregulation 20.63(1).

20.63B Acting Tribunal members

- (1) The Minister may, in writing, appoint a person to act as a Tribunal member (other than the President):
 - (a) during a vacancy in the office, whether or not an appointment has been previously made to the office; or
 - (b) during any period, or during all periods, when the holder of the office:
 - (i) is absent from duty or from Australia and New Zealand; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) A copy of the instrument of appointment must be published in the *Official Journal*.
- (3) The Minister:
 - (a) may terminate the appointment at any time; and
 - (b) must terminate the appointment if the person appointed fails, without reasonable excuse, to disclose a conflict of interest in accordance with regulation 20.64.
- (4) A person is not eligible for appointment to act as a Tribunal member (other than the President) unless the person is eligible for appointment as a Tribunal member under subregulation 20.63(2).

20.64 Disclosure of interests

President

- (1) If the President has or acquires an interest that could conflict with the proper performance of his or her functions as Panel Chair in relation to proceedings that he or she is hearing or is to hear, the President:
 - (a) must tell the parties to the proceedings about the interest; and
 - (b) must not perform those functions without the consent of the parties.
- (2) If the President is unable to perform his or her functions because of a conflict of interest, the Minister may, in writing, appoint another person to be the Panel Chair for the purpose of conducting or completing those proceedings.
- (3) A person is not eligible for appointment under subregulation (2) unless the person is eligible for appointment as President under subregulation 20.63(1).

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- (4) A person so appointed may exercise all the powers and must perform all of the functions of the Panel Chair in relation to those proceedings.

Other Tribunal members

- (5) If a Tribunal Member (other than the President) has or acquires an interest that could conflict with the proper performance of his or her functions as a member of a Panel of the Disciplinary Tribunal in relation to proceedings that he or she is hearing or is to hear, the member:
- (a) must tell the parties to the proceedings about the interest; and
 - (b) must not perform those functions without the consent of the parties.
- (6) If the Tribunal member is unable to perform his or her functions because of a conflict of interest, the Panel Chair may in writing appoint another Tribunal member for the purpose of conducting or completing those proceedings.

114 After regulation 20A.1

Insert:

20A.1A Performance of functions and exercise of powers

- (1) A function that is conferred on a person or body under this Chapter may be exercised in Australia or New Zealand.
- (2) A power that is conferred on a person or body under this Chapter may be exercised in Australia or New Zealand.
- (3) For the purposes of this Chapter and subject to regulation 20A.1B, it is immaterial whether an act or omission mentioned in this Chapter took place in New Zealand.
- (4) For the purposes of this Chapter and subject to regulation 20A.1B, it is immaterial whether a matter mentioned in this Chapter concerns something that took place in New Zealand.

20A.1B Conduct in New Zealand does not constitute an offence under this Chapter

A person is not liable to be prosecuted for an offence against these Regulations if the act or omission constituting the offence occurred in New Zealand.

115 Subparagraph 20A.3(b)(ii)

After “*Corporations Act 2001*”, insert “or the Companies Act 1993 of New Zealand”.

116 Paragraph 20A.10(1)(a)

Omit “is found guilty”, substitute “has, at any time, been found guilty”.

117 Paragraph 20A.10(1)(c)

Repeal the paragraph, substitute:

- (c) the patent attorney’s registration was cancelled or suspended under subregulation 20.44(1) because he or she was found guilty of professional misconduct.

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118 Subregulation 20A.10(2)

Omit “an incorporated”, substitute “the incorporated”.

119 At the end of subregulation 20A.10(4)

Add:

; and (c) be addressed and sent to the President.

120 Regulation 20A.11

Repeal the regulation, substitute:

20A.11 Panel of the Disciplinary Tribunal to be constituted

- (1) Except as otherwise provided by this Part, the Disciplinary Tribunal’s functions and powers in relation to disciplinary proceedings under this Part are to be performed and exercised by a Panel of the Disciplinary Tribunal.
- (2) A Panel of the Disciplinary Tribunal is to be constituted by:
 - (a) a Panel Chair; and
 - (b) 2 other members determined by the Panel Chair under subregulation (3).
- (3) The Panel Chair is to determine, in writing, the other members of the Disciplinary Tribunal who are to constitute the Panel that is to conduct the disciplinary proceedings.
- (4) Subject to subregulation 20A.11E(5), if disciplinary proceedings are commenced against an incorporated patent attorney that is incorporated in Australia or New Zealand, one of the members of the Panel that is conducting the proceedings must also be ordinarily resident in the same country as the country in which the incorporated patent attorney is registered.

Note: Regulation 20.64 sets out requirements relating to the disclosure of conflicts of interest.

20A.11A Meetings of Panel of Disciplinary Tribunal

- (1) The Panel Chair of a Panel of the Disciplinary Tribunal must:
 - (a) convene such meetings of the Panel as the Panel Chair considers necessary for the purpose of conducting disciplinary proceedings being heard by the Panel; and
 - (b) preside at all meetings of the Panel.
- (2) Subject to paragraph 20A.11D(2)(a) and subregulation 20A.11E(5), all members of a Panel of the Disciplinary Tribunal must be present at a meeting of the Panel.
- (3) A question arising at a meeting of a Panel of the Disciplinary Tribunal must be determined by a majority of the votes of the members of the Panel present and voting.
- (4) However, if, in accordance with paragraph 20A.11D(2)(a) or subregulation 20A.11E(5), a hearing of proceedings is continued with 2 members of the Panel, questions arising at the hearing must be determined by a unanimous vote of the 2 members.

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20A.11B Procedure of Panel of Disciplinary Tribunal

- (1) Subject to this Part, the procedures for convening meetings of a Panel of the Disciplinary Tribunal and for the conduct of business by a Panel of the Disciplinary Tribunal are as the Panel Chair determines.
- (2) Proceedings before the Panel are to be conducted quickly and informally, while allowing for proper consideration of the matter before that Panel.
- (3) The Panel is not bound by the rules of evidence but may be informed on any matter in the manner it chooses.
- (4) The Panel may take evidence on oath or on affirmation and, for that purpose, the Panel Chair may administer an oath or affirmation.

20A.11C Panel Chair unavailable to complete hearing

- (1) This regulation applies if:
 - (a) a hearing of proceedings in relation to a particular matter has been commenced or completed by a Panel of the Disciplinary Tribunal; and
 - (b) before the matter has been determined, the Panel Chair has:
 - (i) ceased to be a member; or
 - (ii) for any reason, ceased to be available as a member of the Panel.
- (2) The matter is to be reheard by a new Panel constituted in accordance with regulation 20A.11.
- (3) The new Panel may, for the purposes of performing or exercising the Disciplinary Tribunal's functions or powers in relation to that matter, have regard to any record of the proceedings before the Panel as previously constituted for the purposes of hearing that matter.

20A.11D Member other than the Panel Chair unavailable to complete hearing

- (1) This regulation applies if:
 - (a) a hearing of proceedings in relation to a particular matter has been commenced or completed by a Panel of the Disciplinary Tribunal; and
 - (b) before the matter has been determined, one of the members (other than the Panel Chair) constituting the Panel has:
 - (i) ceased to be a member; or
 - (ii) for any reason, ceased to be available as a member of the Panel.
- (2) Subject to regulation 20A.11E, the Panel Chair may determine that:
 - (a) the hearing and determination, or the determination, of the matter is to be completed by the Panel constituted by the remaining members of the Panel; or
 - (b) the matter is to be reheard by a new Panel constituted in accordance with regulation 20A.11.
- (3) If a matter is reheard under paragraph (2)(b), the new Panel may, for the purposes of performing or exercising the Disciplinary Tribunal's functions or

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powers in relation to that matter, have regard to any record of the proceedings before the Panel as previously constituted for the purposes of hearing that matter.

20A.11E No member ordinarily resident in same country in which incorporated patent attorney subject to proceedings is registered

- (1) This regulation applies if:
 - (a) a hearing of proceedings in relation to a particular matter has been commenced or completed by a Panel of the Disciplinary Tribunal; and
 - (b) before the matter has been determined, one of the members (other than the Panel Chair) constituting the Panel has:
 - (i) ceased to be a member; or
 - (ii) for any reason, ceased to be available as a member of the Panel; and
 - (c) neither of the remaining members of the Panel is ordinarily resident in the same country in which the incorporated patent attorney that is subject to the proceedings is registered.
- (2) The Panel Chair must, as soon as practicable, give the incorporated patent attorney notice in writing that:
 - (a) one of the members constituting the Panel has ceased to be, or to be available as, a member of the Panel; and
 - (b) neither of the remaining members is ordinarily resident in the same country in which the incorporated patent attorney is registered; and
 - (c) the incorporated patent attorney may, within the period specified in the notice:
 - (i) elect to have the matter completed by the Panel constituted by the remaining members of the Panel; or
 - (ii) elect to have the matter reheard by a new Panel constituted in accordance with regulation 20A.11.
- (3) An election under paragraph (2)(c) must be in writing and given to the Panel Chair within the period specified in the notice.
- (4) The period specified in the notice must be not less than 21 days after the day on which the notice is given.
- (5) Despite subregulation 20A.11(4), if the incorporated patent attorney elects to have the matter completed by the Panel constituted by the remaining members of the Panel, the Panel constituted by the remaining members may hear and determine, or determine, the matter.
- (6) If the Panel Chair does not receive an election within the period specified in the notice or such longer period as the Panel Chair allows, the Panel Chair must arrange for the matter to be reheard by a new Panel constituted in accordance with regulation 20A.11.
- (7) If the matter is reheard in accordance with subparagraph (2)(c)(ii) or subregulation (6), the new Panel may, for the purposes of performing or exercising the Disciplinary Tribunal's functions or powers in relation to that matter, have regard to any record of the proceedings before the Panel as previously constituted for the purposes of hearing that matter.

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121 Subregulations 20A.12(1) and (2)

Repeal the subregulations, substitute:

- (1) As soon as practicable after receiving an application under regulation 20A.10, the Panel Chair of a Panel of the Disciplinary Tribunal must:
 - (a) fix a day, time and place to hear the application; and
 - (b) notify the incorporated patent attorney and the Board of that day, time and place.

122 Subregulation 20A.13(1)

After “before”, insert “a Panel of”.

123 Subregulation 20A.13(2)

Omit “Disciplinary Tribunal”, substitute “Panel Chair”.

124 Subregulation 20A.13(2)

Omit “Tribunal may”, substitute “Panel Chair may”.

125 Subparagraphs 20A.13(2)(b)(i) and (ii)

Omit “Tribunal” (wherever occurring), substitute “Panel”.

126 Regulation 20A.14 (heading)

Repeal the heading, substitute:

20A.14 Representation before a Panel of Disciplinary Tribunal

127 Subregulation 20A.14(1)

Omit “the hearing before the Disciplinary”, substitute “a hearing before a Panel of the Disciplinary”.

128 Subregulation 20A.14(2)

Omit “Disciplinary Tribunal”, substitute “Panel”.

129 Subregulation 20A.14(2)

Omit “the Tribunal”, substitute “the Panel Chair”.

130 Subregulation 20A.15(1)

Omit “the hearing before the Disciplinary Tribunal, the Tribunal may, by instrument in writing signed by the person constituting the Tribunal”, substitute “a hearing before a Panel of the Disciplinary Tribunal, the Panel Chair may, by written instrument signed by the Panel Chair”.

131 Paragraphs 20A.15(1)(a) and (b)

Omit “Tribunal”, substitute “Panel”.

132 Regulation 20A.16 (heading)

Repeal the heading, substitute:

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20A.16 Offences by persons appearing before a Panel of Disciplinary Tribunal

133 Paragraph 20A.16(1)(a)

After “before”, insert “a Panel of”.

134 Subparagraph 20A.16(1)(b)(iii)

Omit “Tribunal”, substitute “Panel”.

135 Subparagraph 20A.16(2)(a)(ii)

Omit “Disciplinary Tribunal”, substitute “Panel Chair”.

136 Paragraph 20A.16(2)(b)

Repeal the paragraph, substitute:

- (b) in relation to subparagraph (1)(b)(iii)—the defendant is excused by the Panel Chair.

137 Subparagraph 20A.16(3)(a)(ii)

After “before”, insert “a Panel of”.

138 Subparagraph 20A.16(3)(a)(iii)

After “allowances”, insert “in accordance with Part 2 of Schedule 8”.

139 Paragraph 20A.16(3)(b)

Repeal the paragraph.

140 Paragraph 20A.16(4)(b)

Omit “paragraph (3)(b)”, substitute “subparagraph (3)(a)(iii)”.

141 Paragraph 20A.16(5)(a)

After “before”, insert “a Panel of”.

142 Regulation 20A.17 (heading)

Repeal the heading, substitute:

20A.17 Protection of certain persons

143 Subregulation 20A.17(1)

Repeal the subregulation, substitute:

- (1) A person who is a member of a Panel of the Disciplinary Tribunal conducting a hearing of disciplinary proceedings under this Part has, in the performance of his or her duties as a member of the Panel, the same protection and immunity as a Justice of the High Court.

144 Subregulations 20A.17(3) and (4)

After “before”, insert “a Panel of”.

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145 Regulation 20A.18 (heading)

Repeal the heading, substitute:

20A.18 Decision of Panel of Disciplinary Tribunal

146 Subregulation 20A.18(1)

Omit “the Disciplinary”, substitute “a Panel of the Disciplinary”.

147 Subregulation 20A.18(2)

Omit “Disciplinary Tribunal”, substitute “Panel”.

148 Subregulation 20A.18(3)

Omit “Disciplinary Tribunal may ”, substitute “Panel may”.

149 Paragraphs 20A.18(3)(d) and (e)

Repeal the paragraphs, substitute:

- (d) findings made (regardless of when the findings were made) about the conduct of the incorporated attorney in any other proceedings brought before a relevant disciplinary tribunal;
- (e) findings made (regardless of when the findings were made) about the conduct of the incorporated attorney’s employees and officers in any other proceedings brought before a relevant disciplinary tribunal;

150 At the end of regulation 20A.18

Add:

- (4) In this regulation:

relevant disciplinary tribunal means any of the following:

- (a) the Patents and Trade Marks Attorneys Disciplinary Tribunal established by regulation 20.61 as in force before the commencement of this subregulation;
- (b) the Trans-Tasman IP Attorneys Disciplinary Tribunal established by regulation 20.61 as in force on the commencement of this subregulation;
- (c) the Patents and Trade Marks Attorneys Disciplinary Tribunal as continued in force by subregulation 23.42(1) or 23.43(1) of these Regulations or subregulation 22.14(1) or 22.15(1) of the *Trade Marks Regulations 1995*.

151 Regulation 20A.19 (heading)

Repeal the heading, substitute:

20A.19 Notification and publication of decisions of Panel of Disciplinary Tribunal

152 Subregulation 20A.19(1)

Omit “The Disciplinary Tribunal must, within 14 days after making a decision under regulation 20A.18”, substitute “Within 14 days after a Panel of the Disciplinary Tribunal makes a decision under regulation 20A.18, the Panel must”.

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153 Subparagraph 20A.19(1)(a)(i)

Omit “Tribunal”, substitute “Panel”.

154 Paragraph 20A.19(1)(c)

Omit “Tribunal”, substitute “Panel”.

155 Subregulation 20A.20(1)

After “If”, insert “a Panel of”.

156 Subregulation 20A.20(1)

Omit “the Tribunal”, substitute “the Panel Chair”.

157 Subregulation 20A.20(2)

After “If”, insert “a Panel of”.

158 Subregulation 20A.20(2)

Omit “the Tribunal”, substitute “the Panel Chair”.

159 Subregulation 20A.20(3)

Omit “Disciplinary Tribunal”, substitute “Panel Chair”.

160 Paragraph 20A.21(3)(b)

Omit “Disciplinary Tribunal”, substitute “relevant Panel Chair”.

161 Subparagraph 20A.22(2)(b)(ii) (first occurring)

After “*Corporations Act 2001*”, insert “or the Companies Act 1993 of New Zealand”.

162 Subparagraph 20A.22(2)(b)(ii) (second occurring)

Omit “(ii) evidence”, substitute “(iii) evidence”.

163 Paragraph 22.10(1)(a)

After “Australia”, insert “or New Zealand”.

164 Paragraph 22.10(1)(b)

Omit “another”, substitute “an”.

165 At the end of subregulation 22.10(1)

Add:

; or (c) an address in New Zealand to which it is practicable and reasonable for a person providing mail delivery services to deliver mail.

166 Subregulation 22.10(2)

Omit “or (b)”, substitute “, (b) or (c)”.

167 At the end of regulation 22.10

Add:

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- (5) Service by post is a prescribed means by which a document may be served on, or given or sent to, a person for the purposes of subsection 221(1) of the Act.

168 Paragraphs 22.13(3)(c) and (d)

Repeal the paragraphs, substitute:

- (c) in relation to a Panel of the Disciplinary Tribunal—the Panel Chair;
- (d) the Board.

169 Paragraph 22.26(2)(d)

Omit “the Disciplinary”, substitute “a Panel of the Disciplinary”.

170 Subparagraphs 22.26(2)(d)(i) and (vi)

After “decision of”, insert “Panel of”.

171 At the end of Chapter 23

Add:

Part 3—Transitional provisions for Schedule 4 to the Intellectual Property Laws Amendment Act 2015 and Schedule 1 to the Intellectual Property Legislation Amendment (Single Economic Market) Regulation 2016

23.38 Definitions

In this Part:

commencement day means the day on which Schedule 4 to the *Intellectual Property Laws Amendment Act 2015* commences.

old regulations means these Regulations as in force immediately before the commencement day.

23.39 Removal of name from Register if New Zealand court determines person should not practise as a patent attorney in New Zealand

- (1) This regulation is made for section 199 of the Act and applies if:
- (a) an individual is a registered patent attorney; and
 - (b) immediately before the commencement day the individual was registered as a patent attorney in New Zealand (whether or not the individual was also a registered patent attorney in Australia; and
 - (c) on and after that commencement day, the New Zealand Commissioner of Patents advises the Designated Manager that:
 - (i) a New Zealand court has determined that the individual should not practise as a patent attorney in New Zealand; and
 - (ii) all rights of appeal in relation to the court’s determination have been exhausted or have expired; and

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- (iii) the conduct giving rise to the court's determination occurred before the commencement day.
- (2) The Designated Manager must remove the name of the individual from the Register of Patent Attorneys as soon as practicable after receiving the advice.

23.40 Restoring attorney's name after advice from New Zealand Commissioner of Patents

For paragraph 198(4)(g) of the Act, if an individual's name is removed from the Register of Patent Attorneys under regulation 23.39, the Designated Manager must not enter the individual's name in the Register unless the Designated Manager has received written advice from the New Zealand Commissioner of Patents that a New Zealand court has determined that the individual's name may be entered in the Register.

23.41 Transitional—registration as a patent attorney

- (1) This regulation applies in relation to a person if he or she satisfies the following requirements:
 - (a) the person has passed each relevant New Zealand examination mentioned in subregulation (4);
 - (b) the person passed at least one of those examinations before the commencement day;
 - (c) the person passed the remainder of those examinations before the end of the 4-year period beginning on the commencement day.
- (2) For the purposes of subsection 198(4) of the Act (as affected by item 82 of Schedule 4 to the *Intellectual Property Laws Amendment Act 2015*), the person must meet the requirements set out in subregulation (3) instead of the requirements set out in regulations 20.2, 20.3, 20.5, 20.6, 20.7 and 20.8.
- (3) The person's application for registration as a patent attorney must be:
 - (a) in writing, in a form approved by the Designated Manager; and
 - (b) accompanied by the statements and declarations mentioned in paragraphs 20.3(1)(d), (e) and (f); and
 - (c) accompanied by a written declaration signed by the person that he or she satisfies the requirements mentioned in subregulation (1); and
 - (d) accompanied by the fee mentioned in item 104 of Schedule 7.
- (4) For paragraph (1)(a), the relevant examinations are the following examinations jointly arranged and conducted by the New Zealand Commissioner of Patents and the Council of the New Zealand Institute of Patent Attorneys under Part 30 of the Patents Regulations 1954 of New Zealand:
 - (a) an examination on the subject of New Zealand law and practice relating to patents and designs;
 - (b) an examination on the subject of New Zealand law and practice relating to trade marks;
 - (c) an examination on the subject of foreign patent law;
 - (d) an examination on the subject of preparation of specifications for New Zealand patents;

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- (e) an examination on the subject of patent attorney practice in New Zealand, including the interpretation and criticism of patent specifications.

Note: Under subitem 82(2) of Schedule 4 to the *Intellectual Property Laws Amendment Act 2015*, an individual who passes these examinations must apply for registration as a patent attorney under section 198 of the *Patents Act 1990* within 6 months after the completion of the last of the examinations.

23.42 Continuation of certain disciplinary proceedings—individuals

- (1) This regulation applies if:
 - (a) before the commencement day disciplinary proceedings had been commenced against a registered patent attorney by the Professional Standards Board for Patent and Trade Marks Attorneys under Part 8 of Chapter 20 of the old regulations; and
 - (b) the proceedings had not been completed under the old regulations before the commencement day.
- (2) Despite the amendments and repeals made by Schedule 1 to the *Intellectual Property Legislation Amendment (Single Economic Market) Regulation 2016*, on and after the commencement day:
 - (a) Part 8 of Chapter 20, and Division 2 of Part 10 of Chapter 20, of the old regulations continue to apply in relation to the proceedings; and
 - (b) the appointment of the person constituting the Patents and Trade Marks Attorneys Disciplinary Tribunal conducting the proceedings is continued in force for the purpose of completing the proceedings; and
 - (c) the Minister may, if necessary, appoint a person under regulation 20.63 or 20.64 of the old regulations in the circumstances mentioned in those regulations for the purpose of completing the proceedings; and
 - (d) for the purposes of the proceedings, references in Part 8 of Chapter 20 of the old regulations to the Professional Standards Board for Patent and Trade Marks Attorneys are taken to be references to the Trans-Tasman IP Attorneys Board.

23.43 Continuation of certain disciplinary proceedings—incorporated patent attorneys

- (1) This regulation applies if:
 - (a) before the commencement day disciplinary proceedings had been commenced against an incorporated patent attorney by the Professional Standards Board for Patent and Trade Marks Attorneys under Part 5 of Chapter 20A of the old regulations; and
 - (b) the proceedings had not been completed under the old regulations before the commencement day.
- (2) Despite the amendments and repeals made by Schedule 1 to the *Intellectual Property Legislation Amendment (Single Economic Market) Regulation 2016*, on and after the commencement day:
 - (a) Division 2 of Part 10 of Chapter 20, and Part 5 of Chapter 20A, of the old regulations continue to apply in relation to the proceedings; and

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- (b) the appointment of the person constituting the Patents and Trade Marks Attorneys Disciplinary Tribunal conducting the proceedings is continued in force for the purpose of completing the proceedings; and
- (c) the Minister may, if necessary, appoint a person under regulation 20.63 or 20.64 of the old regulations in the circumstances mentioned in those regulations for the purpose of completing the proceedings; and
- (d) for the purposes of the proceedings, references in Part 5 of Chapter 20A of the old regulations to the Professional Standards Board for Patent and Trade Marks Attorneys are taken to be references to the Trans-Tasman IP Attorneys Board.

23.44 Termination of appointment of Patents and Trade Marks Attorneys Disciplinary Tribunal upon completion of all proceedings

The Minister must, in writing, terminate the appointment of the person constituting the Patents and Trade Marks Attorneys Disciplinary Tribunal conducting proceedings mentioned in any of the following provisions as soon as practicable after the Minister is satisfied that all such proceedings (including all appeals) have been finalised:

- (a) subregulation 23.42(1);
- (b) subregulation 23.43(1);
- (c) subregulation 22.14(1) of the *Trade Marks Regulations 1995*;
- (d) subregulation 22.15(1) of the *Trade Marks Regulations 1995*.

23.45 Transitional—exemptions from patents knowledge requirements

- (1) This regulation applies in relation to an applicant who, before 1 January 2018:
 - (a) has passed a course of study that has outcomes that are the same as, or similar to, those of a knowledge requirement mentioned in Schedule 5 to the old regulations; and
 - (b) has passed the course of study at a satisfactory level.
- (2) Despite the amendments of Schedule 5 made by Schedule 1 to the *Intellectual Property Legislation Amendment (Single Economic Market) Regulation 2016*, Schedule 5 to the old regulations continues to apply for the purpose of the Board making a decision to grant an exemption to the applicant under regulation 20.9.

172 Clause 2 of Part 2 of Schedule 5

Repeal the clause, substitute:

- 2. A course of study must provide for a student to have an appropriate level of understanding of the Australian and New Zealand legal systems and how intellectual property rights may be protected.

173 Clause 5 of Part 5 of Schedule 5

Omit “system of protecting and exploiting trade marks, patents and designs, both in Australia and”, substitute “systems of protecting and exploiting trade marks, patents and designs, both in Australia and New Zealand, and in”.

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174 Schedule 8 (note to Schedule heading)

Repeal the note, substitute:

Note: See subregulations 20.41(3) and 20A.16(3) and regulation 22.8.

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Schedule 2 Single economic market amendments relating to trade marks

Schedule 2—Single economic market amendments relating to trade marks

Trade Marks Regulations 1995

1 Regulation 2.1 (definition of *Board*)

Repeal the definition.

2 Regulation 2.1 (definition of *Disciplinary Tribunal*)

Repeal the definition, substitute:

Disciplinary Tribunal means the Trans-Tasman IP Attorneys Disciplinary Tribunal established by regulation 20.61 of the *Patents Regulations 1991*.

3 Regulation 2.1

Insert:

Panel Chair, in relation to a Panel of the Disciplinary Tribunal, means:

- (a) the President; or
- (b) if the President is unable to perform his or her functions in relation to proceedings of the Panel because of a conflict of interest—the person appointed under regulation 20.64(2) of the *Patents Regulations 1991* to be the Panel Chair for the proceedings.

Panel of the Disciplinary Tribunal means a Panel constituted under regulation 20A.11.

President means the President of the Disciplinary Tribunal.

4 At the end of paragraph 17A.16(3)(b)

Add “or New Zealand”.

5 At the end of subregulation 17A.17(3)

Add “or New Zealand”.

6 Subregulation 17A.34H(2)

After “Australian”, insert “or New Zealand”.

7 At the end of subregulation 17A.34H(5)

Add “or New Zealand”.

8 At the end of subregulation 17A.37(3)

Add “or New Zealand”.

9 Paragraph 17A.42B(1)(a)

After “Australia”, insert “or New Zealand”.

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Single economic market amendments relating to trade marks **Schedule 2**

10 At the end of subregulation 17A.48H(2)

Add “or New Zealand”.

11 At the end of subregulation 17A.50(5)

Add “or New Zealand”.

12 Subregulation 17A.74(2)

Repeal the subregulation, substitute:

Address for service

- (2) An address for service for the person must be:
- (a) an address in Australia or New Zealand at which a document under the Act or these Regulations may be given to the person personally or to the person’s representative; or
 - (b) an address in Australia to which it is practicable and reasonable for Australia Post, or a person acting on behalf of Australia Post, to deliver mail; or
 - (c) an address in New Zealand to which it is practicable and reasonable for a person providing mail delivery services to deliver mail.

13 Subregulation 20.1(1)

Omit “(1) In”, substitute “In”.

14 Subregulation 20.1(2)

Repeal the subregulation.

15 Paragraph 20.6(a)

Repeal the paragraph, substitute:

- (a) a level 5 or higher AQF qualification; or

16 Paragraph 20.6(b)

Omit “an AQF qualification from the higher education sector”, substitute “a level 5 or higher AQF qualification”.

17 Regulation 20.11

Omit all the words after “first time”, substitute:

as if:

- (a) item 2 in Part 2 of that Schedule provided:
 - ‘2. A course of study must provide for a student to have an appropriate level of understanding of the Australian legal system and how intellectual property rights may be protected.’; and
- (b) item 5 in Part 5 of that Schedule provided:
 - ‘5. A course of study must provide for a student to have an appropriate level of understanding of the system of protecting and exploiting trade marks, both in Australia and other countries’.

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Schedule 2 Single economic market amendments relating to trade marks

18 At the end of regulation 20.15

Add:

- ; and (f) subregulation 20.36(4) of the *Patents Regulations 1991* were omitted; and
- (g) the words ‘or subregulation 20.36E(5)’ in subregulation 20.36A(4) of the *Patents Regulation 1991* were omitted; and
- (h) the words ‘Subject to regulation 20.36E, the Panel’ in subregulation 20.36D(2) of the *Patents Regulation 1991* were omitted and the words ‘The Panel’ substituted; and
- (i) regulation 20.36E of the *Patents Regulation 1991* were omitted.

19 Paragraph 20A.10(1)(a)

Omit “is found guilty of professional misconduct under Division 5 of Part 20”, substitute “has, at any time, been found guilty of professional misconduct in accordance with Division 6 of Part 20”.

20 Paragraph 20A.10(1)(c)

Repeal the paragraph, substitute:

- (c) the trade marks attorney’s registration was cancelled or suspended in accordance with Division 6 of Part 20 because he or she was found guilty of professional misconduct.

21 Subregulation 20A.10(2)

Omit “an incorporated”, substitute “the incorporated”.

22 At the end of subregulation 20A.10(4)

Add:

- ; and (c) be addressed and sent to the President.

23 Regulation 20A.11

Repeal the regulation, substitute:

20A.11 Panel of the Disciplinary Tribunal to be constituted

- (1) Except as otherwise provided by this Part, the Disciplinary Tribunal’s functions and powers in relation to disciplinary proceedings under this Part are to be performed and exercised by a Panel of the Disciplinary Tribunal.
- (2) A Panel of the Disciplinary Tribunal is to be constituted by:
 - (a) a Panel Chair; and
 - (b) 2 other members determined by the Panel Chair under subregulation (3).
- (3) The Panel Chair is to determine, in writing, the other members of the Disciplinary Tribunal who are to constitute the Panel that is to conduct the proceedings.

Note: Regulation 20.64 of the *Patents Regulations 1991* sets out requirements relating to the disclosure of conflicts of interest.

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20A.11A Meetings of Panel of Disciplinary Tribunal

- (1) The Panel Chair of a Panel of the Disciplinary Tribunal must:
 - (a) convene such meetings of the Panel as the Panel Chair considers necessary for the purpose of conducting disciplinary proceedings being heard by the Panel; and
 - (b) preside at all meetings of the Panel.
- (2) Subject to paragraph 20A.11D(2)(a), all members of a Panel of the Disciplinary Tribunal must be present at a meeting of the Panel.
- (3) A question arising at a meeting of a Panel of the Disciplinary Tribunal must be determined by a majority of the votes of the members of the Panel present and voting.
- (4) However, if, in accordance with paragraph 20A.11D(2)(a), a hearing of proceedings is continued with 2 members of the Panel, questions arising at the hearing must be determined by a unanimous vote of the 2 members.

20A.11B Procedure of Panel of Disciplinary Tribunal

- (1) Subject to this Part, the procedures for convening meetings of a Panel of the Disciplinary Tribunal and for the conduct of business by a Panel of the Disciplinary Tribunal are as the Panel Chair determines.
- (2) Proceedings before the Panel are to be conducted quickly and informally, while allowing for proper consideration of the matter before the Panel.
- (3) The Panel is not bound by the rules of evidence but may be informed on any matter in the manner it chooses.
- (4) The Panel may take evidence on oath or on affirmation and, for that purpose, the Panel Chair may administer an oath or affirmation.

20A.11C Panel Chair unavailable to complete hearing

- (1) This regulation applies if:
 - (a) a hearing of proceedings in relation to a particular matter has been commenced or completed by a Panel of the Disciplinary Tribunal; and
 - (b) before the matter has been determined, the Panel Chair has:
 - (i) ceased to be a member; or
 - (ii) for any reason, ceased to be available as a member of the Panel.
- (2) The matter is to be reheard by a new Panel constituted in accordance with regulation 20A.11.
- (3) The new Panel may, for the purposes of performing or exercising the Disciplinary Tribunal's functions or powers in relation to that matter, have regard to any record of the proceedings before the Panel as previously constituted for the purposes of hearing that matter.

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20A.11D Members other than the Panel Chair unavailable to complete hearing

- (1) This regulation applies if:
 - (a) a hearing of proceedings in relation to a particular matter has been commenced or completed by a Panel of the Disciplinary Tribunal; and
 - (b) before the matter has been determined, one of the members (other than the Panel Chair) constituting the Panel has:
 - (i) ceased to be a member; or
 - (ii) for any reason, ceased to be available as a member of the Panel.
- (2) The Panel Chair may determine that:
 - (a) the hearing and determination, or the determination, of the matter is to be completed by the Panel constituted by the remaining members of the Panel; or
 - (b) the matter is to be reheard by a new Panel constituted in accordance with regulation 20A.11.
- (3) If a matter is reheard under paragraph (2)(b), the new Panel may, for the purposes of performing or exercising the Disciplinary Tribunal's functions or powers in relation to that matter, have regard to any record of the proceedings before the Panel as previously constituted for the purposes of hearing that matter.

24 Subregulations 20A.12(1) and (2)

Repeal the subregulations, substitute:

- (1) As soon as practicable after receiving an application under regulation 20A.10, the Panel Chair of a Panel of the Disciplinary Tribunal must:
 - (a) fix a day, time and place to hear the application; and
 - (b) notify the incorporated trade marks attorney and the Board of that day, time and place.

25 Subregulation 20A.13(1)

After "before", insert "a Panel of".

26 Subregulation 20A.13(2)

Omit "Disciplinary Tribunal", substitute "Panel Chair".

27 Subregulation 20A.13(2)

Omit "Tribunal may", substitute "Panel Chair may".

28 Subparagraphs 20A.13(2)(b)(i) and (ii)

Omit "Tribunal" (wherever occurring), substitute "Panel".

29 Regulation 20A.14 (heading)

Repeal the heading, substitute:

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20A.14 Representation before Panel of Disciplinary Tribunal

30 Subregulation 20A.14(1)

Omit “the hearing before the Disciplinary”, substitute “a hearing before a Panel of the Disciplinary”.

31 Subregulation 20A.14(2)

Omit “Disciplinary Tribunal”, substitute “Panel”.

32 Subregulation 20A.14(2)

Omit “the Tribunal”, substitute “the Panel Chair”.

33 Subregulation 20A.15(1)

Omit “the hearing before the Disciplinary Tribunal, the Tribunal may, by instrument in writing signed by the person constituting the Tribunal”, substitute “a hearing before a Panel of the Disciplinary Tribunal, the Panel Chair may, by written instrument signed by the Panel Chair”.

34 Paragraphs 20A.15(1)(a) and (b)

Omit “Tribunal”, substitute “Panel”.

35 Regulation 20A.16 (heading)

Repeal the heading, substitute:

20A.16 Offences by persons appearing before a Panel of Disciplinary Tribunal

36 Paragraph 20A.16(1)(a)

After “before”, insert “a Panel of”.

37 Subparagraph 20A.16(1)(b)(iii)

Omit “Tribunal”, substitute “Panel”.

38 Subparagraph 20A.16(2)(a)(ii)

Omit “Disciplinary Tribunal”, substitute “Panel Chair”.

39 Paragraph 20A.16(2)(b)

Repeal the paragraph, substitute:

(b) in relation to subparagraph (1)(b)(iii)—the defendant is excused by the Panel Chair.

40 Subparagraph 20A.16(3)(a)(ii)

After “before”, insert “a Panel of”.

41 Subparagraph 20A.16(3)(a)(iii)

After “allowances”, insert “in accordance with Part 2 of Schedule 8 to the *Patents Regulations 1991*”.

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42 Paragraph 20A.16(3)(b)

Repeal the paragraph.

43 Paragraph 20A.16(4)(b)

Omit “paragraph (3)(b)”, substitute “subparagraph (3)(a)(iii)”.

44 Paragraph 20A.16(5)(a)

After “before”, insert “a Panel of”.

45 Regulation 20A.17 (heading)

Repeal the heading, substitute:

20A.17 Protection of certain persons

46 Subregulation 20A.17(1)

Repeal the subregulation, substitute:

- (1) A person who is a member of a Panel of the Disciplinary Tribunal conducting a hearing of disciplinary proceedings under this Part has, in the performance of his or her duties as a member of the Panel, the same protection and immunity as a Justice of the High Court.

47 Subregulations 20A.17(3) and (4)

After “before”, insert “a Panel of”.

48 Subregulation 20A.18(heading)

Repeal the heading, substitute:

20A.18 Decision of Panel of Disciplinary Tribunal

49 Subregulation 20A.18(1)

Omit “the Disciplinary”, substitute “a Panel of the Disciplinary”.

50 Subregulation 20A.18(2)

Omit “Disciplinary Tribunal”, substitute “Panel”.

51 Subregulation 20A.18(3)

Omit “Disciplinary Tribunal may ”, substitute “Panel may”.

52 Paragraphs 20A.18(3)(d) and (e)

Repeal the paragraphs, substitute:

- (d) findings made (regardless of when the findings were made) about the conduct of the incorporated attorney in any other proceedings brought before a relevant disciplinary tribunal;
- (e) findings made (regardless of when the findings were made) about the conduct of the incorporated attorney’s employees and officers in any other proceedings brought before a relevant disciplinary tribunal;

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53 At the end of regulation 20A.18

Add:

(4) In this regulation:

relevant disciplinary tribunal means any of the following:

- (a) the Patents and Trade Marks Attorneys Disciplinary Tribunal established by regulation 20.61 of the *Patents Regulations 1991* as in force before the commencement of this subregulation;
- (b) the Trans-Tasman IP Attorneys Disciplinary Tribunal established by regulation 20.61 of the *Patents Regulations 1991* as in force on the commencement of this subregulation;
- (c) the Patents and Trade Marks Attorneys Disciplinary Tribunal as continued in force by subregulation 23.42(1) or 23.43(1) of the *Patents Regulations 1991* or subregulation 22.14(1) or 22.15(1) of these Regulations.

54 Regulation 20A.19 (heading)

Repeal the heading, substitute:

20A.19 Notification and publication of decisions of Panel of Disciplinary Tribunal

55 Subregulation 20A.19(1)

Omit “The Disciplinary Tribunal must, within 14 days after making a decision under regulation 20A.18”, substitute “Within 14 days after a Panel of the Disciplinary Tribunal makes a decision under regulation 20A.18, the Panel must”.

56 Subparagraph 20A.19(1)(a)(i)

Omit “Tribunal”, substitute “Panel”.

57 Paragraph 20A.19(1)(c)

Omit “Tribunal”, substitute “Panel”.

58 Subregulation 20A.20(1)

After “If”, insert “a Panel of”.

59 Subregulation 20A.20(1)

Omit “the Tribunal”, substitute “the Panel Chair”.

60 Subregulation 20A.20(2)

After “If”, insert “a Panel of”.

61 Subregulation 20A.20(2)

Omit “the Tribunal”, substitute “the Panel Chair”.

62 Subregulation 20A.20(3)

After “The”, insert “Panel Chair of a Panel of the”.

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63 Paragraph 20A.21(3)(b)

Omit “Disciplinary Tribunal”, substitute “relevant Panel Chair”.

64 Paragraphs 21.6(3)(c) and (d)

Repeal the paragraphs, substitute:

- (c) in relation to a Panel of the Disciplinary Tribunal—the Panel Chair;
- (d) the Board.

65 After regulation 21.7

Insert:

21.7A Service by post

Service by post is a prescribed means by which a document may be served on, or given or sent to, a person for the purposes of paragraphs 215(6)(a) and (b) of the Act.

66 Paragraph 21.35(2)(bb)

Repeal the paragraph, substitute:

- (bb) a Panel of the Disciplinary Tribunal under regulation 20A.18 (decision of Panel of Disciplinary Tribunal); or

67 Paragraph 21.35(2)(c)

Omit “the Disciplinary”, substitute “a Panel of the Disciplinary”.

68 Subparagraph 21.35(2)(c)(i)

Omit “Disciplinary”, substitute “Panel of Disciplinary”.

69 At the end of Part 22

Add:

Division 3—Transitional provisions for Schedule 4 to the Intellectual Property Laws Amendment Act 2015 and Schedule 2 to the Intellectual Property Legislation Amendment (Single Economic Market) Regulation 2016

22.12 Definitions

In this Division:

commencement day means the day on which Schedule 4 to the *Intellectual Property Laws Amendment Act 2015* commences.

old Patents regulations means the *Patents Regulations 1991* as in force immediately before the commencement day.

old regulations means these Regulations as in force immediately before the commencement day.

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22.13 Transitional—registration as a trade marks attorney

- (1) This regulation is made for item 84 of Schedule 4 (the *amending Schedule*) to the *Intellectual Property Laws Amendment Act 2015*.
 - (2) For paragraphs 84(1)(c) and (d) of the amending Schedule, an application for registration as a trade marks attorney must:
 - (a) be in writing, in a form approved by the Designated Manager; and
 - (b) be accompanied by a statement of experience as mentioned in subregulation (3) of this regulation that satisfies the Designated Manager that the applicant's level of competency in trade marks law and practice is sufficient to warrant the applicant becoming a registered trade marks attorney; and
 - (c) be accompanied by a declaration signed by the applicant that the applicant:
 - (i) has not, in the 5 years preceding the application, been convicted of an offence mentioned in subregulation (4) of this regulation; and
 - (ii) is not under sentence of imprisonment for an offence mentioned in subregulation (5) of this regulation; and
 - (d) be accompanied by the fee mentioned in item 28 of Schedule 9.
 - (3) For paragraph (2)(b), the statement of experience must:
 - (a) set out details of the applicant's experience in the following activities in the 5 years preceding the application:
 - (i) searching trade marks records;
 - (ii) preparing, filing and prosecuting trade marks applications in relation to Australia and New Zealand;
 - (iii) preparing, filing and prosecuting trade marks applications in relation to other countries and organisations, particularly countries and organisations that are regarded as major trading partners with Australia and New Zealand;
 - (iv) providing advice on the validity and infringement of trade marks; and
 - (b) contain a declaration, signed by the applicant, that the details of the applicant's experience set out in the statement of experience are true and correct; and
 - (c) be accompanied by evidence of such experience.
- Note: Examples of major trading partners for paragraph (c) are as follows:
- (a) European Union;
 - (b) Japan;
 - (c) People's Republic of China;
 - (d) Republic of Korea;
 - (e) United States of America.
- (4) An offence against any of the following Acts is a prescribed offence for paragraph 84(1)(e) of the amending Schedule:
 - (a) the Act;
 - (b) the *Designs Act 2003*;
 - (c) the *Patents Act 1990*.
 - (5) An offence of dishonesty, whether committed in Australia or New Zealand and whether committed before or after the commencement day, for which the

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maximum penalty is imprisonment for at least 2 years is a prescribed offence for paragraph 84(1)(f) of the amending Schedule.

22.14 Continuation of certain disciplinary proceedings—individuals

- (1) This regulation applies if:
 - (a) before the commencement day disciplinary proceedings had been commenced against a registered trade marks attorney by the Professional Standards Board for Patent and Trade Marks Attorneys under Part 8 of Chapter 20 of the old Patents regulations (as that Part applied to the registered trade marks attorney because of Division 6 of Part 20 of the old regulations); and
 - (b) the proceedings had not been completed before the commencement day.
- (2) Despite the amendments and repeals made by Schedule 2 to the *Intellectual Property Legislation Amendment (Single Economic Market) Regulation 2016*, on and after the commencement day:
 - (a) Part 8 of Chapter 20 of the old Patents regulations (as that Part applied to a registered trade marks attorney because of Division 6 of Part 20 of the old regulations) continues to apply in relation to the proceedings; and
 - (b) the appointment of the person constituting the Patents and Trade Marks Attorneys Disciplinary Tribunal conducting the proceedings is continued in force for the purpose of completing the proceedings; and
 - (c) for the purposes of the proceedings, references in Part 8 of Chapter 20 of the old Patents regulations (as that Part applied to the registered trade marks attorney because of Division 6 of Part 20 of the old regulations) to the Professional Standards Board for Patent and Trade Marks Attorneys are taken to be references to the Trans-Tasman IP Attorneys Board.

22.15 Continuation of certain disciplinary proceedings—incorporated trade marks attorneys

- (1) This regulation applies if:
 - (a) before the commencement day disciplinary proceedings had been commenced against an incorporated trade marks attorney under Division 5 of Part 20A of the old regulations by the Professional Standards Board for Patent and Trade Marks Attorneys; and
 - (b) the proceedings had not been completed under the old regulations before the commencement day.
- (2) Despite the amendments and repeals made by the Schedule 2 to the *Intellectual Property Legislation Amendment (Single Economic Market) Regulation 2016*, on and after the commencement day:
 - (a) Division 5 of Chapter 20A of the old regulations continues to apply in relation to the proceedings; and
 - (b) the appointment of the person constituting the Patents and Trade Marks Attorneys Disciplinary Tribunal conducting the proceedings is continued in force for the purpose of completing the proceedings; and
 - (c) for the purposes of the proceedings, references in Division 5 of Part 20A of the old regulations to the Professional Standards Board for Patent and

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Trade Marks Attorneys are taken to be references to the Trans-Tasman IP Attorneys Board.

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Schedule 3 Other amendments relating to the single economic market

Schedule 3—Other amendments relating to the single economic market

Designs Regulations 2004

1 Paragraph 11.19(1)(a)

After “Australia”, insert “or New Zealand”.

2 Paragraph 11.19(1)(b)

Omit “another”, substitute “an”.

3 At the end of subregulation 11.19(1)

Add:

; or (c) an address in New Zealand to which it is practicable and reasonable for a person providing mail delivery services to deliver mail.

4 Subregulation 11.19(2)

Omit “or (b)”, substitute “, (b) or (c)”.

5 At the end of regulation 11.19

Add:

(5) Service by post is a prescribed means by which a document may be served on, or given or sent to, a person for the purposes of subsection 145(1) of the Act.

Plant Breeder’s Rights Regulations 1994

6 After regulation 3D

Insert:

3DA Service of documents

Service by post is a prescribed means by which a document may be served on, or given or sent to, a person for the purposes of section 73 of the Act.