



ARC PROFESSIONALISM PROJECT MAPPING PROFESSIONAL REGIMES INTERNATIONALLY

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MAPPING PROFESSIONAL REGIMES INTERNATIONALLY: INTRODUCTION

Long standing professions have generally taken a great interest in, and taken steps to ensure, the quality of the initial education and life-long learning of professionals, fitness for professional life, professional values, ethical standards and professional conduct, competence, risk management, discipline and other issues of concern to the profession. They have adopted a range of institutional arrangements to address these interests and concerns – varying in time, jurisdiction and culture. These institutional arrangements may be centred on sub-national, national or international institutions – though it is common for elements of each to be present. Modern professions also exist within a variety of different models of regulation which are usually layered over traditional professional logics. Some of these are based on legislation and the regulatory institutions created by that legislation which may recognise, sit with or sit over the professional bodies. The reasons for this regulation over and above what is provided by the traditional governance practices is to protect consumers and to prevent the potential abuse of professional monopolies.¹

This project seeks to understand the mixture of ethical standards, formal rules and institutions in terms of a range of professional governance models. To do this, the team is using a form of Professor Sampford's integrity systems approach/methodology arising from two ARC Linkage grants with Transparency International which Sampford led – and which were based on his work in the early 1990s. This has been

adapted to various sectoral governance systems (judicial integrity, electoral integrity, human rights regimes, carbon integrity) but not yet, in any full sense, to professions. This approach involves identifying the relevant norms and institutions, identifying their intended and actual functions, understanding the relationships between them and then mapping the whole. By assessing the combination of institutions and models of regulation, and identifying gaps and weaknesses this methodology assists us to understand the balance between responsibility of the individual professional and the role of professional associations. This project seeks to do this for four jurisdictions (Australia (New South Wales), United Kingdom (England), United States (New York State), Canada (Ontario), in each case recognising the international elements of professional governance.² This will assist the team to identify the patterns of professional regulation and varieties of regulatory models that are adopted and whether regulatory innovation is revealed which might be considered for replication in Australia. This review should help understand how the PSC's approach synchronises with (or diverges from) professional regulation and practice in other countries. The report produces an overall map (or diagrammatic representations) of the professions in the four identified jurisdictions.

¹ In addition, significant numbers of the profession may work within large organisations who have their own governance arrangements which ideally should reinforce rather than contradict professional standards – something that is dealt with in the 'Ethical Responsibilities of Employed Professionals'.

² The following description of the regulatory framework in the United Kingdom is accurate at the time of writing. We note the UK referendum to leave the European Union (Brexit) and the notification to withdraw from the EU pursuant to Art 50 of the Treaty of the European Union.

OVERVIEW OF PROFESSIONS AND REGULATORY JURISDICTIONS COVERED IN THIS MAPPING PROJECT

PROFESSION	COUNTRY				INTERNATIONAL
	AUSTRALIA	UK	CANADA	USA	
DOCTORS	Direct statutory regulation and meta-regulation with AHPRA overseeing 14 National Health Practitioner Boards including the Medical Board of Australia	Direct statutory regulation and meta-regulation with the PSA overseeing nine professional regulatory statutory bodies including the General Medical Council	Province- based direct statutory regulation co-opting the existing professional association for Ontario doctors	State-based direct statutory including licencing and registration	World Health Professions Alliance. World Medical Association
LAWYERS	Co-regulation under the Legal Profession Uniform Law with the Legal Services Commissioner and Law Society of NSW co-regulating. Also regulated by the meta-regulator, the PSC	Co-regulation with the Legal Services Board as the oversight regulator	Co-regulation (delegated Self-regulation through lawyer-controlled law societies but courts often determine ethical obligations)	State-based professional licensing	Commonwealth Law Association International Bar Association
ACCOUNTANTS	Professional association self-regulation overseen by meta-regulator – PSC.	Self-regulation with professional oversight from the Financial Reporting Council	Delegated self-regulation by province/territory overseen by the Public Trust Committee	State-based professional licencing by each state’s statutory Board of Accountancy	Association of Chartered Certified Accountants International Federation of Accountants
FINANCIAL PLANNERS	Commonwealth direct statutory regulation under the Corporations Act but also with self-regulation and the recent introduction of meta-regulator – FASEA.	UK direct statutory regulation under FMSA but also with active self-regulation	Provincial direct statutory regulation but also with active self-regulation	Federal direct statutory regulation by the SEC and CFTC, among others but also with active self-regulation	Privately-operated ‘Certified Financial Planner’ accreditation system

DOCTORS

INTRODUCTION

This section examines the regulation of medical doctors to understand the way the different components of regulation interact to create a 'system'. This is done by looking at the government statutory regimes, professional associations, international directions/professional guidance, providers of medical services and the roles of educational institutions, research bodies and political influences. The examples of Australia (NSW) and the United Kingdom (England) offer insights into the use of multidisciplinary regulation, with Australian Health Practitioners Regulation Agency ('AHPRA') and the Professional Standards Authority (UK) overseeing multidisciplinary regulation. Profession-specific and province-based self-regulation/co-regulation is found in Ontario Canada with emphasis on professional associations that focus solely on one medical field. Interestingly, the Canadian approach in Ontario has seen a professional association appointed as a primary legislated regulator of the medical profession. The approach of New York State in the United States varies again, with a focus on state-based regulation and licensing with some federal layers aimed at improving standardisation.

DOCTORS INTERNATIONALLY

REGULATORY STRUCTURE

As an increasingly global profession, doctors have responsibilities as medical practitioners in a globalised world. Directions for practice and how the profession delivers on its values are found in principles, for example, of the World Health Organisation ('WHO'), the Sustainable Development Goals³ ('SDG's), the International Red Cross, and United Nations programs as they relate to health. The organisations and their principles all shape, mobilise and create the global medical profession, by describing the expectations of medical service delivery.

Professional Associations

The World Medical Association ('WMA') consists of 111 National Medical Associations⁴ and describes its aim to 'achieve highest international standards in Medical Education, Medical Science, Medical Art and Medical Ethics, and Health Care for all people in the world'.⁵

The establishment and promotion of high standards of ethical behaviour are central to the objectives of the WMA and the association

³ Goal 3 Ensure healthy lives and promote well-being for all at all ages: United Nations 2015 Transforming Our World: The 2030 Agenda for Sustainable Development A/RES/70/1 <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>.

⁴ National Medical Associations form. Constituent Memberships and individuals are permitted to join as Associate Members. Membership includes the Australian Medical Association, British Medical Association, American Medical Association and the Canadian Medical Association.

⁵ <https://www.wma.net/who-we-are/>

cooperates with medical ethics experts and organisations to develop them.

The WMA has an International Code of Medical Ethics⁶, an Ethics Manual⁷, and publishes policy statements on medical professionalism and ethics in areas such as, patient care, research on human subjects, Big Data and public health.⁸

The WMA also issues declarations on contemporary topics in areas including quality education assurance.⁹

The WMA claims ‘Official Relations’ with the WHO aimed to support and advise the inter-governmental body¹⁰, and cooperates with other UN organisations and programmes linked to health¹¹.

The WMA also cooperates with other United Nations bodies such as the World Trade Organization, the World Intellectual Property Organization or the International Telecommunication Union, when particular health or professional issues.¹²

The WMA also works with other medical associations, regional bodies, corporate partners, academic institutions and organisations operating internationally.¹³

Termination of associate membership is caused by member action that is inconsistent with the purposes and objectives of the WMA; or brings the medical profession or WMA into disrepute; or harms the WMA’s reputation. Responses by the member to alleged complaints are invited and considered by the WMA.

The World Health Professions Alliance (‘WHPA’) draws together health care professionals, including the medical profession, across 130 countries. It aims to improve the quality of health care and promotes collaboration amongst the health professions and relevant stakeholders. It brings together allied health associations operating internationally, including the WMA.¹⁴

6 WMA, International Code of Medical Ethics, Adopted by the 3rd General Assembly of the World Medical Association, London, England, October 1949 (as amended in 2006)

7 Medical Ethics Manual 2015 is distributed to medical schools and journals to introduce medical ethics and how to deal with the ethical issues that practitioners may encounter: <<https://www.wma.net/what-we-do/education/medical-ethics-manual/>>

8 <<https://www.wma.net/what-we-do/medical-ethics/>>

9 See, eg, WMA, Declaration of Chicago on Quality Assurance in Medical Education, Adopted by the 68th WMA General Assembly, Chicago, United States, October 2017 <<https://www.wma.net/policies-post/wma-declaration-of-chicago-on-quality-assurance-in-medical-education/>>

10 Principles Governing Relations with Nongovernmental Organisations.

11 Joint United Nations Programme on HIV/AIDS (‘UNAIDS’); International Labour Organization (‘ILO’); International Organization for Migration (‘IOM’); United Nations Educational and Scientific and Cultural Organization (‘UNESCO’); United Nations Children’s Fund (‘UNICEF’); Food and Agriculture Organization of the United Nations (‘FAO’); United Nations High Commissioner for Refugees (‘UNHCR’); United Nations Environment Program (‘UNEP’); United Nations Economic and Social Committee (‘ECOSOC’). See also World Trade Organization; World Intellectual Property Organization; International Telecommunication Union and the intergovernmental organisation, International Committee of Military Medicine.

12 WMA also contributes to the human rights field, listed relationships with the United Nations Human Rights Council and the UN Special Rapporteur on the Highest Attainable Standard of Health.

13 <<https://www.wma.net/who-we-are/alliance-and-partner/partners/>>

14 As well as the International Council of Nurses, the International Pharmaceutical Federation, the World Confederation for Physical Therapy and the World Dental Federation.

WHPA provides a platform for disseminating information and guidance on current health issues and networks for relationships between the health professions, national associations and stakeholders. The Alliance has published practice guidance including A Core Competency Framework for International Health Consultants¹⁵ that contains an Ethical Practice competent to guide practitioners in their patient care.

AUSTRALIAN (NSW) DOCTORS

REGULATORY STRUCTURE

Government Regulation

The primary government legislation regulating medical practitioners throughout Australia is the Health Practitioner Regulation National Law.¹⁶

It is a national scheme that came into force in 2010¹⁷ with each State and Territory in Australia enacting similar legislation¹⁸ to create a uniform nation-wide regime. The regime regulates 14 health professionals including doctors. For each profession, it establishes a statutory regulator, a National Board, and for doctors, the statutory

regulator is the Medical Board of Australia.¹⁹

The regime also creates an overarching statutory regulator, AHPRA, which oversees the 14 National Boards to a limited extent.²⁰

For example, it establishes procedures for developing the codes and guidelines approved by the National Boards, works with the Boards to maintain the national register²¹ and sets annual registration fees.²²

The regime creates a flexible approach to AHPRA's relationship with the National Boards by having AHPRA negotiate a 'health profession agreement' with each Board specifying their respective functions, for example, in setting practitioner annual registration fees.²³

The regime also creates an overriding Ministerial Council made up of Ministers from each State and Territory, which has ultimate oversight of the activity of AHPRA and the National Boards.²⁴

The regime does not have extensive subordinate rules and regulations. Instead, it allows the National Boards flexibility to develop standards, codes and guidelines. AHPRA, like the National Boards, has also developed a range of guidance materials including procedures, practice notes and resource publications.²⁵

15 <http://www.whpa.org/pub2007_IHC.pdf>

16 In NSW, Health Practitioner Regulation National Law (NSW).

17 Australian Health Practitioners Regulation Agency, Accreditation under the Health Practitioner Regulation National Law Act (the National Law) 2.

18 For eg Health Practitioner Regulation National Law (NSW).

19 The 14 National Boards are the Aboriginal and Torres Strait Islander Health Practice Board of Australia, the Chinese Medicine Board of Australia, the Chiropractic Board of Australia, the Dental Board of Australia, the Medical Board of Australia, the Medical Radiation Practice Board of Australia, the Nursing and Midwifery Board of Australia, the Occupational Therapy Board of Australia, the Optometry Board of Australia, the Osteopathy Board of Australia, the Pharmacy Board of Australia, the Physiotherapy Board of Australia, the Podiatry Board of Australia and the Psychology Board of Australia.

20 Agency Management Committee oversees the work of AHPRA.

21 Health Practitioner Regulation National Law s 25.

22 Health Practitioner Regulation National Law s 26.

23 Health Practitioner Regulation National Law s 26.

24 Health Practitioner Regulation National Law s 11-7.

25 Australian Health Practitioners Regulation Agency, Publications <<http://www.ahpra.gov.au/Publications.aspx>>.

The regime, however, does not formally co-opt any professional associations. In summary then, while the regime is extensive and has significant elements of command and control style regulation, it also has significant meta-regulatory characteristics, with AHPRA and the Ministerial Council as meta-regulators. Further, the regime has numerous principles-based requirements giving the National Boards flexibility and discretion. Hence, the regime can be characterised as a form of direct statutory regulation with significant meta-regulatory elements but involving no formal co-regulation.

Professional Associations

The two most important professional associations representing doctors are the Australian Medical Association ('AMA') and the Royal Australian College of General Practitioners ('RACGP'). Both have large memberships, often overlapping, and have major influence on medical professional practice in Australia, maintaining a significant level of self-regulation for the profession. The AMA describes itself as 'the most influential membership organisation representing registered medical practitioners and medical students of Australia'.²⁶

Its primary functions are pursuing its members' interests, public policy advocacy and providing

guidance on best medical practice. It has a long history of lobbying government and influencing public opinion in relation to the profession and medical best practice. It is well-known for its strong influence in lobbying government on public policy issues. An example was its very public and successful campaign in 2015 against the Abbot government's proposed upfront 'GP co-payment' fee.²⁷

The RACGP refers to itself as being 'the largest professional association of general practitioners' with over 30 000 members.²⁸

It engages in similar functions to the AMA. Its focus, however, is less on lobbying government and far more on providing extensive and substantial resources for general practitioners. RACGP has state, territory and field-based 'faculties' which provide state/territory based²⁹ information, advocacy, support and training. The association representing doctors who have completed extra training in a surgical specialty is the Royal Australasian College of Surgeons ('RACS'). The purpose of RACS is to unify the profession of surgery, through the training of surgeons and the promotion of surgical standards in Australia and New Zealand, particularly through its Fellow of the Royal Australasian College of Surgeons qualification.

26 Australian Medical Association, About the AMA <<https://ama.com.au/about-ama>>.

27 Australian Medical Association, 'GP Co-Payment and MBS Funding Cuts' (6 July 2015), Recent General Practice Advocacy Wins <<https://ama.com.au/article/recent-general-practice-advocacy-wins>>.

28 Royal Australian College of General Practitioners, Membership <<http://www.racgp.org.au/yourracgp/membership/>>.

29 For example, RACGP Aboriginal and Torres Strait Islander Health to promote 'culturally appropriate health delivery systems that will improve health outcomes for Aboriginal and Torres Strait Islander communities'.

EDUCATION, TRAINING AND ADMISSION

Government Regulation

Under the regime, the Medical Board ('MBA') sets requirements for entry to the profession, registers practitioners and sets educational and training standards.³⁰

After admission, it registers practitioners³¹ and updates the register including any conditions placed on practitioners³². AHPRA, through its website, provides a central public hub linking to this register and those of the other health professions.³³

Participation in continuing professional development ('CPD') is a requirement of all registered medical practitioners³⁴ and applications for renewal of registration must include a declaration of compliance with the registration standards and National Law obligations. Such declarations may also be audited.

The Australian Medical Council ('AMC') is an independent national standards body for medical education and training. Its purpose is to 'ensure that standards of education, training and assessment of the medical profession promote and protect the health of the Australian community'.³⁵

It is the national accreditation body for medical schools and courses.³⁶

It also oversees the assessment for admission of overseas trained medical practitioners and advises on uniform approaches to registration.³⁷ The AMC reports to the MBA on its accreditation of study programs, with the MBA assessing for approval whether the accredited program of study meets the qualification requirements for the purposes of registration.

Professional Associations

The AMA produces many publications, website articles and notes recommending best practice for doctors. While these do not include formal education and training requirements, all of which are legislated, they do provide ongoing guidance for doctors.

The RACGP Quality Improvement and CPD Program supports Australian general practitioners to maintain and improve their professional knowledge and skills to provide the best possible care for patients and their communities. Provides access to accredited activities, online learning tools and support, independent learning with case studies.³⁸

The RACGP offers a specialist general practice qualification accredited by the Australian Medical Council, the Fellowship of the Royal Australian College of General Practitioners ('FRACGP').

30 Health Practitioner Regulation National Law s 35.

31 Health Practitioner Regulation National Law pt 7.

32 Health Practitioner Regulation National Law s 411.

33 AHPRA, AHPRA - Regulating Australia's Health Practitioners in Partnership with the National Boards <<https://www.ahpra.gov.au/>>.

See also the Register of Practitioners <<http://www.ahpra.gov.au/Registration/Registers-of-Practitioners.aspx>>.

34 Other than those with non-practising registration.

35 <<https://www.amc.org.au/about>>.

36 In accordance with the Health Practitioner Regulation National Law. Medical Schools and their course are assessed against the Accreditation Standards for Primary Medical Education Providers and their Program of Study and Graduate Outcome Statements

37 <<http://www.ahpra.gov.au/Education/Approved-Programs-of-Study.aspx?ref=Medical%20Practitioner&type=General>>.

38 See also the RACGP education curriculum <<https://www.racgp.org.au/Education/Curriculum>>.

Competency is assessed across the core skills of general practice and attainment of the qualification is achievable through multiple avenues under the Fellowship Pathways Policy Framework.³⁹

Similarly, the Royal Australasian College of Surgeons offers the FRACS qualification for doctors that have completed training (including exams and clinical placements) in a specialised surgical field.⁴⁰ The RACS also offers a CPD program ‘as a means of protecting and promoting high standards of health and safety to the public.’⁴¹ As further incentive for maintenance of high educational standards among its members, surgeons with FRACS and proof of participation in the CPD program are eligible for registration on its ‘Find a Surgeon’⁴² online directory. The College also supports education and training providers through course accreditation and by approving an activity for CPD.⁴³

The Professional Development and Standard Board (‘PDSB’) is responsible for College policy on competency of Fellows and the quality of care.

ETHICS

Government Regulation

The Medical Board has created a range of publications setting out codes and guidelines⁴⁴ including a Code of Conduct for Doctors.⁴⁵

This Code establishes ‘the principles that characterise good medical practice and makes explicit the standards of ethical and professional conduct expected of doctors by their professional peers and the community’. The MBA’s code is aligned with the AMA’s Code of Ethics and consistent with the WMA’s Declaration of Geneva⁴⁶ and International Code of Medical Ethics.

Professional Associations

The AMA has as Code of Ethics⁴⁷ and position statements in relation to a wide range of ethical conduct issues, for example, ‘Ethical Issues in Reproductive Medicine’, ‘Medical Professionalism’ and ‘The Role of the Medical Practitioner in End of Life Care’.⁴⁸

39 <<https://www.racgp.org.au/support/policies/fellowship-of-the-racgp-policy/>>.

40 The Australian Medical Council assesses RACS for accreditation to deliver surgical training.

41 <<https://www.surgeons.org/for-the-public/about-racs-surgeons/>>.

42 <<https://www.surgeons.org/for-the-public/find-a-surgeon/>>.

43 <<https://www.surgeons.org/education-training/>>.

44 Medical Board of Australia, Codes, Guidelines and Policies <<http://www.medicalboard.gov.au/Codes-Guidelines-Policies.aspx>>.

45 Medical Board of Australia, Good Medical Practice: A Code of Conduct for Doctors in Australia (March 2014) <<http://www.medicalboard.gov.au/Codes-Guidelines-Policies/Code-of-conduct.aspx>>.

46 <<https://www.wma.net/policies-post/wma-declaration-of-geneva/>>.

47 Australian Medical Association, AMA Code of Ethics – 2004. Editorially Revised 2006 <<https://ama.com.au/position-statement/ama-code-ethics-2004-editorially-revised-2006>>.

48 Australian Medical Association, Ethics and Professionalism – Position Statements <<https://ama.com.au/advocacy/ethics-professionalism/positionstatements>>.

In 2006 the AMA adopted the WMA's Declaration of Geneva as an official policy.⁴⁹

The RACGP produces numerous publications including the expansive 'Guidelines for General Practice', 'Standards for General Practices' and a range of Toolkits.⁵⁰

As with the AMA, these guidelines and standards recommended by the RACGP provide significant guidance to general practitioners regarding professional norms.

The RACS has a Code of Professional Conduct that describes the expected professional behaviour for surgeons, the values of the College and the Pledge. With regard to ethics and human research, there is a National Statement on Ethical Conduct⁵¹ and reporting requirements to the National Health and Medical Research Council ('NHMRC').

DISCIPLINE

Government Regulation

AHPRA plays a role in the disciplinary structure applicable to medical practitioners in Australia regarding investigations into the professional conduct and coordinates with the state and

territory-based Health Complaints Commissions to ensure appropriate organisations investigate claims.

Complaints about unsafe patient care may be made to AHPRA in states other than in NSW and Queensland⁵². NSW has adopted a different approach to investigations and discipline under the Health Professional Councils Authority⁵³ and the Health Care Complaints Commission.⁵⁴

Within New South Wales, the Health Practitioner Regulation National Law Part 8 establishes a comprehensive complaint handling and discipline system.⁵⁵ For doctors, this includes a Professional Standards Committee, an Assessment Committee and a Medical Council.⁵⁶

The Part defines 'professional misconduct' and 'unsatisfactory professional conduct'⁵⁷ and requires any health care practitioner (including doctors), an employer or education provider to notify the Medical Council where it appears a doctor or other health professional has engaged in misconduct.⁵⁸ This is a relatively new innovation introduced by the regime.⁵⁹ Complaints can be made to the Medical Council or the Health Care Complaints Commission. The Medical Council must prepare an annual report summarising the complaints it has received (without identifying individuals) and the action taken.⁶⁰

49 <<https://ama.com.au/media/ama-adopts-wma-declaration-geneva>>

50 RACGP, Publications Listings and Ordering <<http://www.racgp.org.au/publications/ordering/>>.

51 <https://www.surgeons.org/media/346446/2016-04-29_mnl_racs_code_of_conduct.pdf>.

52 AHPRA's disciplinary arm also includes investigation and discipline for non-registered practitioners who have been reported.

53 The HPCA is an administrative agency of the NSW Ministry of Health supporting the statutory councils including the Medical Council.

54 In Queensland, complaints may be made to the Queensland Health Ombudsman.

55 Health Practitioner Regulation National Law pt 8.

56 Health Practitioner Regulation National Law ss 146-49E. In NSW, the NSW Medical Council.

57 Health Practitioner Regulation National Law ss 139B, 139C, 139E.

58 Health Practitioner Regulation National Law ss 141-3.

59 See Kathleen Jackson and Malcolm Parker, 'Full Steam Ahead on the SS "External Regulator?"

60 Health Practitioner Regulation National Law s 41H.

The Health Care Complaints Commission⁶¹ is an independent body that can receive and assess complaints, assist with resolution of those complaints, investigate and prosecute serious complaints.⁶² Where a party is unsatisfied with the Council's decision, there is an appeal process, which, in NSW, is to the NSW Civil and Administrative Tribunal ('NCAT'). Disciplinary measures include a caution, reprimand, fine, registration conditions, further training, or suspension or cancellation of a doctor's registration.

Professional Associations

The Australian Medical Association, the RACGP and RACS have established complaints handling and disciplinary regimes for members with wide discretion as to appropriate action including terminating membership.⁶³ The AMA has also established an Ethics Committee which investigates complaints about unethical behaviour.⁶⁴

UK (ENGLAND) DOCTORS

REGULATORY STRUCTURE

Government Regulation

The UK has a two-tier structure of statutory regulation for doctors, somewhat like that in Australia. The primary statutory regulator is the General Medical Council, which directly regulates doctors. Overseeing the General Medical Council and several other health care professions is the Professional Standards Authority for Health and Social Care, often referred to as the Professional Standards Authority ('PSA'). Its role has some similarities to that of both Australia's AHPRA and Professional Standards Council ('PSC') discussed under the Australian lawyers' section below.

The General Medical Council was created in 1983 by the *Medical Act*.⁶⁵ The Act is extensive and largely a command and control style regime detailing the responsibilities of the Council. This contrasts with Australia, where the Medical Board has significantly more discretion to develop informal guidelines and practices. The PSA, was established more recently, in 2012, under the *Health and Social Care Act*.⁶⁶

61 Health Care Complaints Act 1993 establishes the Commission and complaints are made under s 9.

62 The HCCC's disciplinary roles extends to unregistered health practitioners and health services.

63 AMA (NSW), Constitution of the AMA (NSW) Ltd (May 2016) cls 19-20; RACGP, Constitution (6 October 2010) cls 27-8; Constitution of Royal Australasian College of Surgeons (2010) s 3.

64 See, eg, AMA (NSW), By-Laws of the AMA (NSW) Ltd (May 2011) pt 10.

65 Medical Act 1983 (UK) s 1.

66 Health and Social Care Act 2012 (UK) s 222.

As well as overseeing the General Medical Council, it oversees eight other regulators covering chiropractors, dentists, optometrists, osteopaths, pharmacists, nurses and midwives and other ‘health and care professionals’ such as arts therapists, biomedical scientists, chiropodists and podiatrists.⁶⁷

In contrast to AHPRA, the PSA has a strong statutory oversight role over the nine primary regulators and is required to assess their performance, conduct audits, scrutinise their decisions and regularly report to Parliament.⁶⁸

In addition, the PSA also has the role of accrediting and registering professional or industry associations that it has assessed as being of a high-enough standard based on a set of criteria.⁶⁹ Accredited associations are awarded the PSA’s ‘Quality Mark’, a brand that is recognised by the public as a sign of ‘Good Practice’.⁷⁰ The PSA currently has 19 accredited registered associations. These cover such diverse professions or occupations such as acupuncturists, play therapists, counsellors and psychotherapists, hypnotherapists and homeopaths.⁷¹ The PSA reviews each association’s accreditation annually to ensure their standards remain at a high level. In this

role, the PSA acts more like Australia’s PSC in regulating professional associations it approves (see below). A central concept of the PSA’s regime is the term ‘right-touch regulation’, which it describes as ‘always asking what risk we are trying to address, being proportionate and targeted in regulating that risk or finding ways other than regulation to address it. It is the minimum regulatory force required to achieve the desired result’⁷². This type of discretion within the regime is characteristic of meta-regulation. The *Health and Social Care Act* has also created a statutory body called Monitor⁷³ with the general function of promoting competitiveness, reducing inequalities and improving the UK health system – the National Health Service (‘NHS’) – which covers most medical services provided by doctors. In summary, the overall regulatory structure for the medical profession in the UK has similarities to that in Australia, particularly the two-tier structure, with a primary statutory regulator and an overarching meta-regulation of a range of health professions.

67 The nine statutory regulators are: General Medical Council, General Chiropractic Council, General Dental Council, General Optical Council, General Osteopathic Council, General Pharmaceutical Council, Health and Care Professions Council, Nursing and Midwifery Council and Pharmaceutical Society of Northern Ireland: Professional Standards Council for Health and Social Care, Statutory Regulators Directory <<http://www.professionalstandards.org.uk/regulators/statutory-regulators-directory>>.

68 Professional Standards Authority for Health and Social Care, About Us <<http://www.professionalstandards.org.uk/about-us/our-work>>.

69 Professional Standards Authority for Health and Social Care, Our Standards <<http://www.professionalstandards.org.uk/accredited-registers/about-accredited-registers/our-standards>>.

70 Professional Standards Authority for Health and Social Care, Accredited Registers <<http://www.professionalstandards.org.uk/accreditedregisters>>.

71 Professional Standards Authority for Health and Social Care, Find a Register <<http://www.professionalstandards.org.uk/accredited-registers/find-a-register>>.

72 Professional Standards Authority for Health and Social Care, Professional Standards Authority Right Touch Regulation <<http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation>>.

73 Health and Social Care Act 2012 (UK) ss 61-2.

There are, however, some significant differences. The role of the General Medical Council is far more prescribed and detailed by statute than that of its equivalent in Australia. Further, the PSA is far more involved in overseeing the activities of the various primary statutory regulators than that of Australia's AHPRA. Also, the PSA has the additional role of also regulating private professional associations, which is something AHPRA does not do.

Professional Associations

The UK self-regulatory landscape for doctors is like that in Australia, presumably due to the Australian medical profession historically arising out of the UK profession. There are the two main professional associations in the UK, as in Australia, which even have the same names, apart from their jurisdictional references: the British Medical Association, instead of the Australian Medical Association, and the Royal College of General Practitioners, instead of the Royal Australian College of General Practitioners. Also, as in Australia, there are several other Royal Colleges representing various specialist medical practitioners such as the Royal College of Physicians, the Royal College of Anaesthetists

and the Royal College of Psychiatrists.⁷⁴

The British Medical Association, as with the Australian Medical Association, is the primary union and lobby group for doctors, describing itself as 'the trade union and professional body for 170 000 doctors in the UK'.⁷⁵

The Royal College of General Practitioners also plays a similar role to what the Royal Australian College of General Practitioners has in being the primary association that sets out the detailed norms and standards for general practice, describing itself as 'the professional membership body and guardian of standards for family doctors in the UK, working to promote excellence in primary healthcare'.⁷⁶

One of the few differences between the UK and Australian self-regulatory environments, however, is that in the UK there is also an overarching meta-regulator of the various professional association Royal Colleges, called the Academy of Medical Royal Colleges.⁷⁷

74 The full list of Royal Colleges and Faculties is Royal College of General Practitioners, Royal College of Anaesthetists, Royal College of Emergency Medicine, Royal College of Obstetricians and Gynaecologists, Royal College of Ophthalmologists, Royal College of Paediatrics and Child Health, Royal College of Pathologists, Royal College of Physicians and Surgeons of Glasgow, Royal College of Physicians of Edinburgh, Royal College of Physicians of Ireland, Royal College of Physicians of London, Royal College of Psychiatrists, Royal College of Radiologists, Royal College of Surgeons of Edinburgh, Royal College of Surgeons of England, Royal College of Surgeons in Ireland, Faculty of Dental Surgery, Faculty of Occupational Medicine, Faculty of Pharmaceutical Medicine, Faculty of Public Health, Faculty of Intensive Care Medicine, Faculty of Sexual and Reproductive Healthcare: Academy of Medical Royal Colleges, Who We Are <<http://www.aomrc.org.uk/about-us/academy-history-structure.html>>.

75 British Medical Association, About the BMA <<http://www.bma.org.uk/about-the-bma>>.

76 Royal College of General Practitioners, About Us <<http://www.rcgp.org.uk/about-us.aspx>>.

77 Academy of Medical Royal Colleges, Who We Are <<http://www.aomrc.org.uk/about-us/academy-history-structure.html>>. Members include the Royal College of General Practitioners and the Royal College of Surgeons of England, among others <<http://www.aomrc.org.uk/about-us/academy-members/>>.

The Joint Medical Consultative Council is a forum for policy influence and brings together organisations representing the UK medical profession. The Council was established to represent hospital doctors in negotiations with the Government and other authorities regarding ‘standards of professional knowledge and skill in the health service and the promotion of medical education and research’.⁷⁸ Its membership spans the Academy of Medical Royal Colleges, the British Medical Association, the British Dental Association, the Conference of Postgraduate Medical Deans and the Medical Schools Council.

EDUCATION, TRAINING AND ADMISSION

Government Regulation

The General Medical Council registers doctors in the UK.⁷⁹ It has a statutory role⁸⁰ to promote high standards and, as such, sets practice standards, education and training requirements⁸¹, and maintains the UK medical register.⁸²

The Good Medical Practice (‘GMP’) provides explanatory guidance, case studies and

reflections from tribunal decisions. CPD⁸³ is required as per Good Medical Practice requirements, although hours are not specified the CPD undertaken forms the evidential requirements for revalidation.⁸⁴ The GMC does not endorse or accredit CPD but has issued a Guidance on CPD. The Medical Revalidation process requires all doctors who are registered with a license to practise to demonstrate that they fit to practise through an evaluation of their performance and an annual appraisal process based on the GMC core guidance Good Medical Practice.⁸⁵

Professional Associations

The Academy of Medical Royal Colleges coordinates with the 24 medical Royal Colleges and Faculties to establish standards for education, training and the revalidation of all doctors. It provides CPD guidance, including for example the *Core Principles for Continuing Professional Development*.⁸⁶

78 Joint Medical Consultative Council, "What is the JMCC" <http://www.jointconsultantscommittee.org.uk/index.php?p=What+is+the+JMCC%3F>

79 Medical Act 1983 (UK) s 29A

80 Medical Act 1983 (UK) pts II, III, IIIA, IV.

81 Through the regulation of the standards for medical education, see <https://www.gmc-uk.org/education/index.asp>.

82 General Medical Council, Registration, Licence to Practise and Revalidation Legislation http://www.gmc-uk.org/about/legislation/registration_legislation.asp#lic_to_prac.

83 General Medical Council, Continuing Professional Development: Guidance for All Doctors https://www.gmc-uk.org/Continuing_professional_development_guidance_for_all_doctors_0316.pdf_56438625.pdf.

84 General Medical Council (Licence to Practise and Revalidation) Regulations 2012 https://www.gmc-uk.org/2014_LTP_and_Revalidation_Regs.pdf_58266807.pdf.

85 <https://www.gmc-uk.org/doctors/revalidation/9611.asp>.

86 <http://www.aomrc.org.uk/all-publications/reports-guidance/cpd/>.

ETHICS

Government Regulation

The General Medical Council has the power to advise members of the medical profession on ‘standards of professional conduct’, ‘standards of professional performance’ and ‘medical ethics’.⁸⁷ The GMC sets standards through the Good Medical Practice. The *Medical Act* Part V ‘Fitness to Practise and Medical Ethics’ is also relevant.

Professional Associations

The BMA has a Medical Ethics Committee that focuses on ethical issues as they relate to relationships between the medical profession, the public and the state. This Committee works with the GMC on all matters of ethics affecting medical practice.⁸⁸ The Committee is supported by the Ethics Secretariat on guidance and discussion papers and for ethical advice to members made available to individual members. The BMA Ethics Toolkit provides guidance on the legal and ethical issues relevant to medical practitioners.⁸⁹ Topics include: Armed Forces, Children and Young People, Confidentiality and Health Records, Consent, Ethics: A to Z, Everyday Medical Ethics and Law, Expressions of Doctors’ Beliefs, Medical Ethics Today, Medical Students’ Ethics Tool Kit and

Mental Capacity. The RCGP has a Committee of Medical Ethics.⁹⁰

DISCIPLINE

Government Regulation

Under the *Medical Act*, the General Medical Council investigates and acts in relation to serious complaints against doctors. For less serious complaints, doctors and hospitals are required to have an internal complaint handling process as does the NHS and its associated service providers. There is also an independent ombudsman that can review how complaints are handled and make recommendations and, if their recommendations are not acted on, refer a complaint to the Council. Serious complaints are those where there is an allegation that the doctor’s fitness to practice is ‘impaired’ due to, for example, misconduct, deficient professional performance, a criminal conviction or adverse physical or mental health.⁹¹ Investigations are normally conducted by the Council’s Investigation Committee, also established under the Act. If the Investigation Committee thinks it appropriate, it can refer the matter to the Council’s Fitness to Practice Panel, also established under the Act.⁹³

87 Medical Act 1983 (UK) s 35.

88 <<<https://www.bma.org.uk/collective-voice/committees/medical-ethics-committee/committee-overview>>>.

89. <https://www.bma.org.uk/advice/employment/ethics>.

90 Issues guidance on ethical considerations for members, such as Malcolm Oswald and Dennis Cox, on behalf of the RCGP Ethics Committee, Making Difficult Choices Ethical Commissioning Guidance to General October 2011 <<http://www.rcgp.org.uk/about-us/governance-and-constitution/council.aspx>>.

91 Medical Act 1983 (UK) s 35C.

92 Medical Act 1983 (UK) s 35A.

93 Medical Act 1983 (UK) s 35A.

The Panel can place conditions on the doctor's licence or suspend or cancel their licence.⁹⁴ The affected doctor can request the Panel review its decision.⁹⁵ If the doctor is unsatisfied with that review, they can appeal to the courts. In England and Wales, the High Court of Justice in England and Wales hears the case.⁹⁶

There is a clear distinction between disciplinary action, as outlined above, and complaints, which are less serious.⁹⁷ Where a matter includes both, the complaints process stops while the disciplinary action is active.⁹⁸ Doctors, hospitals and other NHS service providers must have an internal complaints-handling procedure for receiving and reviewing complaints in relation to services they provide. Generally, a complainant should raise the matter with them initially. A complainant can also complain, in relation to doctors, to NHS England, which pays doctors.⁹⁹ For hospitals, a complainant can complain to the relevant 'clinical commissioning group'.¹⁰⁰

Where a complainant in England is still unsatisfied, they can refer the matter to the Parliamentary and Health Services Ombudsman, which is a government

statutory body independent of the NHS, the clinical commissioning groups and other NHS-related bodies. It can investigate the complaint and try to resolve the matter to both parties' satisfaction. They can also make recommendations that the doctor or hospital take specific action, from acknowledging a mistake and apologising, to making a compensation payment, though to changing their practices and procedures.¹⁰¹ If they do not comply, the Ombudsman can refer the matter to the Medical Council or PSA as appropriate.

Professional Associations

The BMA has a Code of Conduct for members, although the details of it, membership rules and the constitution are only accessible to members of the BMA. The RCGP has a Code of Conduct which sets out the conduct requirements for member doctors.¹⁰² Under the Code, only RCGP members, and not the public, can make a complaint against a member doctor.¹⁰³ All members must cooperate in any investigation by the RCGP.¹⁰⁴

94 Medical Act 1983 (UK) s 35D.

95 Medical Act 1983 (UK) s 35D.

96 Medical Act 1983 (UK) s 40.

97 British Medical Association, Dealing with Complaints Made against You <<https://www.bma.org.uk/advice/employment/raising-concerns/dealing-with-complaints>>.

98 Parliamentary and Health Services Ombudsman, Who Are We? <<https://www.ombudsman.org.uk/about-us/who-we-are>>.

99 Parliamentary and Health Services Ombudsman, NHS Complaints Guidance (Updated 14 October 2015) <<https://www.gov.uk/government/publications/the-nhs-constitution-for-england/how-do-i-give-feedback-or-make-a-complaint-about-an-nhs-service>>.

100 Ibid.

101 Parliamentary and Health Services Ombudsman, How We Look into Complaints – What Happens When We Investigate <https://www.ombudsman.org.uk/sites/default/files/PHSO_Step_Three_Info_leaflet_1.pdf>.

102 Royal College of General Practitioners, 'The Members Code of Conduct' (revised 26 February 2016), RCPG Constitution <<http://www.rcgp.org.uk/aboutus/governance-and-constitution/constitution.aspx>>.

103 Ibid cl 24.

104 Ibid cl 24.

The Code sets out the procedure of any investigation, which includes an investigation panel carrying out an initial investigation and having a formal hearing.¹⁰⁵ There are a range of possible sanctions including a formal public reprimand, a written apology, a personal undertaking, removing or correcting information in the public domain, remediation and monitoring of a member's performance, conditions on membership, removal from council membership and suspension or revocation of membership.¹⁰⁶ Thus, the discipline of RCGP members is quite similar to that for Australian RCAGP members.

US (NY STATE) DOCTORS

REGULATORY STRUCTURE

Government Regulation

The Constitution of the United States confers on the states the power to legislate and regulate for health.¹⁰⁷ All states and territories of the United States have adopted medical practice laws, stipulating medical practice requirements within a state jurisdiction and to establish a medical board to ensure the provisions of the Act are adhered to.¹⁰⁸ Licenses are issued by state boards for the general practice of medicine. The structure of boards, their authority and position within the broader state regulatory

systems varies depending on the state. Licensing permits a person to practice medicine in a state, once predetermined qualifications, a national medical licensing examination and proof of education and training are met. Periodic license renewal together with demonstrable adherence to standards of professional conduct and evidence of participation in continuing education programs is required. The timeframe for renewal and prerequisites will depend on the state in which the medical practitioner is licensed. A recent change to the licensing framework in the United States is the development of the Interstate Medical Licensure Compact ('IMLC') which offers an expedited way for practitioners to be licensed to practice medicine in multiple states. The IMLC is an agreement between 22 states¹⁰⁹ that provides a pathway for medical practitioners to qualify to practise medicine across state lines within the Compact if they meet the agreed upon eligibility requirements.¹¹⁰

This Compact was established: to increase access to health care for patients in underserved or rural areas and allowing them to more easily connect with medical experts through the use of telemedicine technologies. While making it easier for physicians to obtain licenses to practice in multiple states, the Compact strengthens public protection

¹⁰⁵ Ibid annex 1.

¹⁰⁶ Ibid cl 27.

¹⁰⁷ Tenth Amendment Reserved Powers.

¹⁰⁸ See FSMB, 'Essentials of a State Medical and Osteopathic Practice Act 2015' <https://www.fsmb.org/Media/Default/PDF/FSMB/Advocacy/GRPOL_essentials.pdf>.

¹⁰⁹ New York has not enacted legislation authorizing the state to join the compact.

¹¹⁰ The Commission, created by the Compact, began operating in October 2015 and the first Letters of Qualification were issued in April 2017 <<http://www.imlcc.org/>>. Required qualifications: <<http://www.imlcc.org/do-i-qualify/>>.

by enhancing the ability of states to share investigative and disciplinary information.¹¹¹

The Federation of State Medical Boards ('FSMB') facilitates state medical board engagement through the sharing of licensure and disciplinary information. This is achieved primarily through contributions to the FSMB's Physician Data Center.¹¹²

Similarly, FSMB's Federation Credentials Verification Service ('FCVS') provides a centralised uniform process for state medical boards regarding licensing. It establishes a permanent, repository of verified credentials including medical education, postgraduate training, examination history, board action history, board certification. The Uniform Application standardises the licensure application process in a standard form with state-specific appendix.

New York State Government Regulation

New York State's licensing requirements are contained in the Education Law¹¹³ and the Regulations of the Commissioner.¹¹⁴ The State Board for Medicine is appointed to assist the State Board of Regents and the Education Department on matters related to professional licensing.¹¹⁵ The New York State Board for Medicine has primary responsibility for licensing and the New York State Office of Professional

Medical Conduct is responsible for disciplinary matters (see below).

Professional Associations

The American Medical Association ('AMA'), founded in 1847, was the first national professional medical organisation in the world and is the main professional national association in the US. The AMA engages with hospitals, medical schools and stakeholders to improve patient care.

The American College of Physicians ('ACP') is the largest national medical-specialty organization and second-largest physician group in the United States. Its membership consists of 141 000 internists, internal medicine subspecialists, and medical students, residents, and fellows who are specialists (or in training to be) in diagnosis, in treatment of chronic illness, and in health promotion and disease prevention.

The American Board of Medical Specialties ('ABMS') is a non-profit organization of approved medical boards of specialty medicine. ABMS is the largest physician-led specialty certification organisation in the United States. It works with medical specialty boards to develop standards of evaluation and certification.

111 <<http://www.imlcc.org/>>.

112 FSMB, National Database (DocInfo) on licensing and disciplinary information is made available to the public <www.docinfo.org>.

113 Title 8, Article 131, Section 6524 <<http://www.op.nysed.gov/prof/med/article131.htm>>.

114 Pt 60 <<http://www.op.nysed.gov/prof/med/part60.htm>>.

115 Art 131, s 6523 Education Law.

The Medical Society of the State of New York ('MSSNY') is a non-profit organization committed to representing the medical profession and advocating health related rights, responsibilities and issues. The MSSNY aims to promote and maintain high standards in medical education and in the practice of medicine to ensure that quality medical care is available to the public.¹¹⁶

The New York American College of Physicians ('NYACP') is New York State's largest medical specialty organisation representing over 12,000 internal medicine physicians focused on advancing the specialty of Internal Medicine in New York State through education, advocacy and improving quality.

EDUCATION, TRAINING AND ADMISSION

Government Regulation

All jurisdictions require that candidates for a medical practice licence within a state have obtained a qualification of doctor of medicine (or doctor of osteopathic medicine).¹¹⁷

Medical school programs are accredited by the Liaison Committee on Medical Education ('LCME')¹¹⁸. All state medical boards require licensure candidates to complete at least one year (some require more) of postgraduate training to be eligible for a full and unrestricted medical licence. State-based specialty

certification boards certify physicians in specialty areas.

The LCME provides accreditation to medical education programs, required for licensing in most states. Both the AAMC and AMA are on the LCME and only graduates of schools holding LCME accreditation are eligible for residency programs accredited by the Accreditation Council for Graduate Medical Education ('ACGME'). The ACGME is the body responsible for accrediting most graduate medical training programs for medical practitioners in the US. National Board of Medical Examiners ('NBME')¹¹⁹ provides independent assessments of healthcare professionals. The NBME's mission is to improve health care through assessment. The NBME manages the US Medical Licensing Examination ('USMLE') which is a jointly sponsored program of the FSMB and the NBME.¹²⁰ All US medical boards accept a pass result of the USMLE as evidence of competency for the practice of medicine.

The NBME and the FSMB have initiated the Post-Licensure Assessment System to evaluate doctors already licensed to practice medicine¹²¹, which medical licensing authorities can use to evaluate physicians who are already licensed. A new exam program, the International Foundations of Medicine, extends the concept of common standards to an international arena.

116 There are over 30,000 licensed physicians, medical residents and medical students in New York State. Membership categories are (a) active, (b) life, (c) honorary, (d) resident and fellow, (e) student, (f) affiliate, (g) post-medical graduate and (h) retired.

117 Entry to medical programs is primarily based on the successful completion of the standardised Medical College Admission Test.

118 Or the American Osteopathic Association Commission on Osteopathic College Accreditation ('AOACOCA').

119 Similarly, there is a National Board of Osteopathic Medical Examiners ('NBOME').

120 The Educational Commission for Foreign Medical Graduates also collaborate in relation to the USMLE.

121 The International Foundations of Medicine promotes the use of an international standard for medical examination: <<http://www.nbme.org/ifom/>>.

International medical graduates must meet the requirements Educational Commission for Foreign Medical Graduates ('ECFMG') for certification prior to entering an ACGME accredited residency or fellowship training program in the United States. ECFMG certification is also required for international medical graduates to take the third part of the United States Medical Licensing Examination ('USMLE') and to obtain an unrestricted medical practice license.

Continuing Medical Education ('CME') (that is, CPD) is regulated by the Accreditation Council for Continuing Medical Education ('ACCME'). The ACCME accredits institutions that offer CME to medical doctors and other healthcare professionals.¹²²

The ACCME sets and maintains the accreditation standards including the Accreditation Criteria, the Standards for Commercial Support and ACCME policies. ACCME has collaborative relationships with American Academy of Family Physicians, the American Medical Association and the American Osteopathic Association regarding the oversight roles of these bodies in national CME accreditation and credit systems. The MSSNY is accredited by the ACCME to provide continuing medical education in New York. New York State Government Regulation

Medical practitioners licensed to practice in New York have completed a program of medical education, received the doctor of medicine ('MD'), doctor of osteopathic medicine ('DO') or equivalent degree; completed a minimum of one year of postgraduate training in an approved residency program; and passed a state-approved licensing examination.

Professional Associations

The Association of American Medical Colleges ('AAMC') focusses on medical education and research. All 149 accredited US and 17 accredited Canadian medical schools, teaching hospitals and academic societies are members. Through its Educational Affairs Unit the AAMC offers training and certification programs in leadership, research and 'Teaching for Quality'.¹²³

The ABMS offers two avenues for medical professionals to show expertise and competency in their field. Board Certification is based on specialty specific assessment to determine expertise in each specialty of medicine, and the ABMS Program for Maintenance of Certification Board which is a system of ongoing professional development.

¹²² This is a voluntary, self-regulatory system of accreditation.

¹²³ See <<https://www.aamc.org/initiatives/meded/>>.

ETHICS

Government Regulation

Each state's medical practice law defines unprofessional conduct within the state. State medical boards also adopt policies and guidelines related to the practice of medicine and designed to improve the overall quality of health care in the state.

Professional Associations

The AMA's Code of Medical Ethics¹²⁴ offers ethical guidance for the medical profession, particularly on patient interaction. The Council on Ethical and Judicial Affairs ('CEJA') reports on current issues facing the medical profession and these are used to update the Code. Combined, the Principles of Medical Ethics and the Opinions of the AMA's Council on Ethical and Judicial Affairs make up the AMA Code of Medical Ethics.

The MSSNY has Principles of Professional Conduct and By Laws that include professional values.

DISCIPLINE

Government Regulation

As described above, the FSMB Physician

Data Center records disciplinary data from jurisdictions in the US, including actions taken by board, government agencies against physicians. State medical boards investigate complaints, discipline those who violate the law, conduct physician evaluations and facilitate rehabilitation of physicians when appropriate.

New York State Government Regulation

The Office of Professional Medical Conduct ('OPMC'), situated within the New York State Department of Health together with the State Board for Professional Medical Conduct administers the State's discipline program for licensed medical professionals. The **Public Health Law** and **Education Law** govern the discipline program.

The mission of the Board is 'to protect the public from medical negligence, incompetence and other kinds of professional misconduct'. The OPMC's mission is to carry out its statutory mandate and the objectives of the Board to deter medical misconduct and promote and preserve appropriate standards of medical practice.

OPMC investigates all complaints¹²⁵, if the evidence supports the misconduct complaint review is undertaken by an investigation committee of the Board, majority support for the finding of sufficient evidence charges and prosecution of those charged with misconduct¹²⁶ is undertaken with assistance of counsel.

124 See <<https://www.ama-assn.org/sites/default/files/media-browser/principles-of-medical-ethics.pdf>>.

125 Public Health Law s 230 establishes the process and ss 6530 and 6531 Education Law define misconduct <<https://www.nysenate.gov/legislation/laws/EDN/6530>>. Every complaint received by the OPMC must be reviewed: Public Health Law s 230(10).

126 Sections 6530 and 6531 the Education Law define misconduct.

Physicians on probation or those with recently restored licenses are monitored.¹²⁷ The Office has an education function¹²⁸ and oversees the administration of the New York State Physician Profile.¹²⁹

The New York State Physician Profile is an online resource that makes available information on doctors in New York.¹³⁰ The profile makes available information¹³¹ including: information about the doctor's medical education, information about translation services at the doctor's office, information about legal actions taken against the doctor.¹³²

CANADIAN (ONTARIO) DOCTORS

REGULATORY STRUCTURE

Government Regulation

The medical profession in Canada is regulated by the provincial governments. In Ontario, there are two relevant Acts: the *Regulated Health Professions Act*¹³³ ('RHPA') and the *Medicine Act*.¹³⁴ The primary Act is the RHPA which, as the name suggests, regulates a number of

health professions¹³⁵ including the medical profession. The Medical Council of Canada ('MCC') is a national organization responsible for ensuring that all Canadians receive equal and high-quality care and offers the only form of assessment for accreditation to be eligible to practice in Canada.

While licencing of medical practitioners is undertaken at the provincial level, the MCC maintains the Canadian Medical Register and the Physician Credentials Repository. The Federation of Medical Regulatory Authorities of Canada ('FMRAC') is the national organisation of the provincial and territorial medical regulatory authorities. Its mission is to 'advance medical regulation on behalf of the public through collaboration, common standards and best practices.'¹³⁶

Medical Regulation in Ontario

As mentioned above, each provincial and territorial medical regulatory authority is responsible for licensure, registration, complaints and accreditation. The College of Physicians and Surgeons of Ontario regulates the practice of medicine for quality health care.

127 OPMC also oversees the contract with the MSSNY's Committee for Physician Health ('CPH') – a non-disciplinary program designed to identify medical practitioners who may need referrals for treatment and assists doctors returning to practice following treatment. The program is non-disciplinary in nature and designed to promote safe medical practice.

128 According to the OPMC, it provides a 'single point of information for the education, training, practice, legal actions and professional activities of every physician licensed and registered to practice in New York State.'

129 <https://www.health.ny.gov/health_care/consumer_information/physician_profile/about.htm>.

130 Established in accordance with the New York Patient Health Information and Quality Improvement Act of 2000: Public Health Law s 2995.

131 Some information is required, optional information may be added by medical practitioners.

132 Profile information is available for all medical doctors and doctors of osteopathy who are registered and licensed to practice medicine in New York State. Under of Public Health Law subdiv 4, s 2995(a), physicians must report information in the Physician Profile and, as a condition of registration renewal and update their Profile within six months prior to the expiration of the physician's current registration period <https://www.nydoctor-profile.com/dispatch?action=process_welcome>.

133 Regulated Health Professions Act 1991 (Ont).

134 Medicine Act 1991 (Ont).

135 RHPA sch 1 Audiology and Speech-Language Pathology, Chiropractic, Chiropractic, Dental Hygiene, Dental Technology, Dentistry, Denturism, Dietetics, Homeopathy, Kinesiology, Massage Therapy, Medical Laboratory Technology, Medical Radiation Technology, Medicine, Midwifery, Naturopathy, Nursing, Occupational Therapy, Opticianry, Optometry, Pharmacy, Physiotherapy, Psychology, Psychotherapy, Respiratory Therapy, Traditional Chinese Medicine. It should be noted that the RHPA refers to each expressly as a profession notwithstanding that some are far from being commonly accepted as professions in other countries.

136 See <<https://fmrac.ca/about-us/>>.

The Regulated Health Professions Act ('RHPA') establishes the College and defines its authority and powers. The Health Professions Procedural Code and the Medicine Act are also relevant regulations. As noted above, under the RHPA, the College has been appointed as primary regulator of the medical profession in Ontario. However, it has a long history as a professional association of the Ontario medical profession for over 150 years.¹³⁷ It is only since the enactment of the RHPA, that it took on its current, legislated regulatory role. Thus, the RHPA refers to the profession (and all the 26 health professions) as self-governing health professions. All doctors in Ontario must be members of the College to practise medicine.¹³⁸ The College issues registration certificates for the practice of medicine in the province. The College promotes standards of practice for the medical profession, provides guidance on legislation and regulation, plays an investigative role regarding complaints and conducts disciplinary hearings into potential misconduct.¹³⁹

Professional Associations

The Canadian Medical Association ('CMA') is a voluntary professional organisation representing most physicians in Canada with autonomous divisions of the CMA in each province/territory. The Canadian Medical Association is an

advocacy group which supports the interests of Canadian physicians and provides advice and guidance. The CMA has 85 000 member physicians. Specialty and special-interest physician organizations can be affiliated with the CMA.¹⁴⁰

The Ontario Medical Association offers membership to physicians, residents and students in Ontario. Other professional associations include, for example, the College of Family Physicians of Canada, the Canadian Medical Protective Association¹⁴¹ and the Royal College of Physicians and Surgeons of Canada.

EDUCATION, TRAINING AND ADMISSION

Government Regulation

The Maintenance of Certification ('MOC') Program is the Royal College's CPD program for Fellows and health care professionals. Participation in the MOC Program is a requirement for admission and renewal of Fellowship in the Royal College. The Royal College of Physicians and Surgeons of Canada accredits residency programs, administering residency exams, promoting physicians'

137 The College of Physicians and Surgeons of Ontario, A Look Back <<http://www.cpso.on.ca/About-Us/A-Look-Back>>.

138 The College of Physicians and Surgeons of Ontario, About the College <<http://www.cpso.on.ca/About-Us>>.

139 Ibid.

140 <<https://www.cma.ca/En/Pages/affiliates.aspx>>.

141 CMPA, Good Practices Guide <https://www.cmpa-acpm.ca/serve/docs/ela/goodpracticesguide/pages/patient_safety/patient_safetye.html>.

continued learning. The College has an Education Committee, which is responsible for:

- reviewing the undergraduate studies at faculties of medicine in Ontario and encouraging curriculum enhancement .
- monitoring and sustaining the level and quality of Ontario postgraduate programs of medical education.
- reviewing the Ontario continuing medical education programs.¹⁴²

The Registration Committee ‘may make an Order directing the Registrar to issue a certificate of registration; to issue a certificate of registration with terms, conditions and limitations; or to refuse to issue a certificate of registration¹⁴³’. Such Orders can then be appealed to the Health Professions Appeal and Review Board. An Order of that Board can then be appealed to the Divisional Court of Ontario.¹⁴⁴

ETHICS

Government Regulation

The College of Physicians and Surgeons of Ontario’s¹⁴⁵ Practice Guide describes professional values and principles and lays the foundations for expectations for the professional

conduct of medical doctors practicing in Ontario:

From these overarching values flow principles of practice and related duties. Together, the values, principles and duties of medical professionalism enable the profession to provide the best quality care . . . Medical professionalism is the translation of the values of the profession — compassion, service, altruism, and trustworthiness — into action.¹⁴⁶

Professional Associations

The CMA’s Code of Ethics¹⁴⁷ provides ethical guidance regarding ‘the core activities of medicine – such as health promotion, advocacy, disease prevention, diagnosis, treatment, rehabilitation, palliation, education and research’. It is based on the fundamental principles and values of medical ethics, especially compassion, beneficence, non-maleficence, respect for persons, justice and accountability. The Code, together with CMA policies on specific topics, constitutes a compilation of guidelines that can provide a common ethical framework for Canadian physicians. The CMA has a four-page Code of Ethics.

142 The College of Physicians and Surgeons of Ontario, Committees <<http://www.cpso.on.ca/About-Us/About-Council/Committees>>.

143 Ibid.

144 Ibid.

145 The College also refers to the guidance offered by ‘principles of bioethics, the Royal College of Physicians and Surgeons of Canada’s CanMEDS framework, the Canadian Medical Association’s Code of Ethics, and codes and guidelines from other medical leaders across Canada and internationally’.

146 See <<http://www.cpso.on.ca/Policies-Publications/The-Practice-Guide-Medical-Professionalism-and-Col/Introduction>>.

147 CMA, Code of Ethics (Update 2004), Reviewed 2018 <<http://policybase.cma.ca/dbtw-wpd/PolicyPDF/PD04-06.pdf>> .

The fundamental responsibilities are stated as:

1. Consider first the well-being of the patient.
2. Practise the profession of medicine in a manner that treats the patient with dignity and as a person worthy of respect.
3. Provide for appropriate care for your patient, even when cure is no longer possible, including physical comfort and spiritual and psychosocial support.
4. Consider the well-being of society in matters affecting health.
5. Practise the art and science of medicine competently, with integrity and without impairment.
6. Engage in lifelong learning to maintain and improve your professional knowledge, skills and attitudes.
7. Resist any influence or interference that could undermine your professional integrity.
8. Contribute to the development of the medical profession, whether through clinical practice, research, teaching, administration or advocating on behalf of the profession or the public.
9. Refuse to participate in or support practices that violate basic human rights.
10. Promote and maintain your own health and well-being.¹⁴⁸

148 See <<http://policybase.cma.ca/dbtw-wpd/PolicyPDF/PD04-06.pdf>>.

DISCIPLINE

Government Regulation

The College of Physicians and Surgeons of Ontario has a disciplinary process largely operated by its Inquiries, Complaints and Reports Committee. This Committee ‘oversees all investigations into physicians’ care and conduct, including public complaints investigations, Registrar’s investigations, and inquiries into a physician’s capacity to practise’.¹⁴⁹ The Committee can investigate such issues as:

- requiring the doctor to appear before a panel of the ... Committee to be cautioned
- referring allegations of professional misconduct or incompetence to the Discipline Committee
- referring potential incapacity concerns to the Fitness to Practise Committee
- requiring a physician to complete specified education or remediation program
- taking any other action the Committee feels is appropriate and which is consistent with the relevant legislation.¹⁵⁰

The Discipline Committee hears more serious matters that relate to professional misconduct or incompetence.¹⁵¹

The College also has a Fitness to Practise Committee, which conducts hearings of allegations relating to a physician’s ‘capacity to practise medicine that are referred by an incapacity inquiry panel of the Inquiries, Complaints and Reports Committee’.¹⁵²

Reviews of complaint matters may be heard by the Health Professions Appeal and Review Board.¹⁵³

ACCOUNTANTS

INTRODUCTION

The mapping of accountancy professions across the four identified jurisdictions shows a mix of regulatory types with technical and professional accounting standards forming the regulatory framework.¹⁵⁴ Recognising the professional mobility required for chartered accountants, some global bodies have a strong presence across the jurisdictions and promote international standards. The CPA certification found across a number of jurisdictions is an example of the usefulness of internationally recognised professional designations.

149 The College of Physicians and Surgeons of Ontario, Committees, above n 142.

150 Ibid.

151 Ibid.

152 Ibid.

153 The Health Professions Appeal and Review Board, About Us, <http://www.hparb.on.ca/scripts/english/about.asp#howe>.

154 Technical accounting standards and professional accounting standards play complimentary roles in the regulatory framework of the accounting profession and for this reason we describe the technical standards and relevant regulatory bodies below.

Regulatory oversight by independent bodies is increasing in prominence and comes in different forms in the jurisdictions, noting the Professional Standards Councils (PSC) in Australia, the Financial Reporting Council (FRC) in the UK and the role of the Public Trust Committee in Canada. In Australia, a form of self-regulation by the professional associations exists with supervision by a meta-regulator. Similarly, in the United Kingdom self-regulation operates with professional oversight from the Financial Reporting Council. Canada provides an example of delegated self-regulation by province, while state-based licensing is found in the United States. Accountants fulfil many important roles within the finance field, some with specific regulation and codes of practice, including for example auditors. For the purposes of this mapping project we have considered regulation and codes as they apply generally to the accountancy profession.

ACCOUNTANTS INTERNATIONALLY

REGULATORY STRUCTURE¹⁵⁵

The increasing frequency of cross border financial transaction has seen a convergence of accounting standards at the international level, aimed at promoting increased consistency of financial reporting. The IFRS Foundation is an independent not-for-profit organisation that developed and established the globally accepted accounting standards (International Financial Reporting Standards (IFRS Standards)). The IFRS Foundation's standard-setting body, the International Accounting Standards Board (IASB), sets IFRS Standards.¹⁵⁶ The significance of the IFRS Standards is the commonality of language that aims to produce company accounts and financial statements that are comparable across international jurisdictions as they promote standardisation of financial accounts. The IFRS Foundation's mission focuses on long-term global economy stability as a means to further the public interest, emphasising transparency, accountability, trust, and efficiency in financial markets.¹⁵⁷ Globally accepted standards for the accounting profession improve the quality of financial information, which improves decision making

155 The World Trade Organization (WTO) influences professions as far as the various trade treaties affect the provision of services by professions and the extent to which professions are subject to WTO dispute resolution processes. The Financial Stability Board (FSB) coordinating national financial authorities and international standard-setting bodies to monitor the global financial system and support the development of regulation and supervision of the financial sector. Members include: Australia: Reserve Bank of Australia, The Treasury; Canada: Bank of Canada, Office of the Superintendent of Financial Institutions, Department of Finance; UK: Bank of England, Financial Conduct Authority, HM Treasury; USA: Board of Governors of the Federal Reserve System, U.S. Securities & Exchange Commission (SEC), U.S. Department of Treasury Financial Stability Board, "About Us," <http://www.fsb.org/about/#mandate>.

156 IFRS Foundation, "About Us," <http://www.ifrs.org/about-us/who-we-are/#about-us>. "List of IFRS Standards," <https://www.ifrs.org/issued-standards/list-of-standards/>. The organisation's governance structure consists of a Monitoring Board; Trustees that oversee the activities of the board and promote the IFRS

157 "About Us." "IFRS Foundation Constitution," (2016), <https://www.ifrs.org/-/media/feature/about-us/legal-and-governance/constitution-docs/ifrs-foundation-constitution.pdf?la=en&hash=6152EE0474D3331AC616CDA581DDE9FF3E2A3450>.

of those involved in markets, increases accountability and is a source of information for regulators of financial markets.¹⁵⁸

The International Accounting Standards Board (IASB) is responsible for the development and publication of IFRS Standards¹⁵⁹. The Constitution of the IFRS Foundation outlines the Board responsibilities and composition requirements.¹⁶⁰ International organisations including the G20, the Financial Stability Board and the World Bank support the work of the IFRS Foundation and the Standards are currently required in more than 140 jurisdictions.¹⁶¹

Professional Associations

The International Federation of Accountants (IFAC) is a global professional association focussed on strengthening the profession of accountancy to serve the public interest. Central to IFAC's work is the promotion of internationally recognised standards. IFAC's vision is "for the global accountancy profession to be recognised as essential to strong and sustainable organizations, financial markets, and economies." IFAC promotes the value of professional accountants, and professional accountancy organisations in serving the public interest, and supports the implementation of international standards and guidance.¹⁶²

Independent standard-setting boards supported by IFAC include the International Auditing and Assurance Standards Board; International Accounting Education Standards Board; International Ethics Standards Board for Accountants; International Public Sector Accounting Standards Board. IFAC promotes convergence to the standards issued by these boards as well as to the IFRS Standards set by the IASB.

The IFAC Council undertakes oversight of the IFAC activities and policies.¹⁶³ The Public Interest Oversight Board (PIOB) oversees the work of IFAC's Member Body Compliance Program, the International Accounting Education Standards Board, the International Auditing and Assurance Standards Board, and the International Ethics Standards Board for Accountants.¹⁶⁴

The PIOB's objective is to increase public confidence that the activities of IFAC and the Boards, including standard setting, are properly responsive to the public interest.¹⁶⁵

PIOB members are nominated by international institutions and regulatory bodies.

¹⁵⁸ "About Us".

¹⁵⁹ "List of IFRS Standards".

¹⁶⁰ "IFRS Foundation Constitution", see Section 36 for Board responsibilities and Sections 24-26 for composition and Board membership criteria.

¹⁶¹ "Who Uses IFRS Standards?" <https://www.ifrs.org/use-around-the-world/use-of-ifrs-standards-by-jurisdiction/>. Australia, the United Kingdom and Canada require the use of IFRS Standards. The United States requires use of the US GAAP. "IFRS Foundation Constitution", Section 27 requires the Board to collaborate with standard-setters (national or otherwise) and official bodies for the development of IFRS Standards and to promote the convergence of national accounting standards and IFRS Standards.

¹⁶² International Federation of Accountants, <https://www.ifac.org/about-ifac/organization-overview/faq>.

¹⁶³ one representative from each member body, and the IFAC Board

¹⁶⁴ International Federation of Accountants.

¹⁶⁵ Public Interest Oversight Board, "How the PIOB Operates," <http://www.ipiob.org/index.php/how-the-piob-operates>. The PIOB was established on agreement between IFAC and the Monitoring Group (representing the international regulatory community via the International Organisation of Securities Commissions (IOSCO). The MG was established by the IOSCO, The Basel Committee on Banking Supervision (BCBS), The International Association of Insurance Supervisors (IAIS), The European Commission (EC) and the World Bank Monitoring Group, Charter, http://www.iosco.org/about/monitoring_group/pdf/monitoring_group_charter.pdf.

IFAC membership criteria are described in the IFAC Bylaws. Membership of the association comprises of professional accountancy organizations interested in the international accountancy profession, support IFAC's mission and programs, participate in the IFAC Member Body Compliance Program, and make financial contributions as required by the IFAC Constitution.¹⁶⁶ It is comprised of more than 175 members and associates in more than 130 countries and jurisdictions, representing almost 3 million accountants in public practice, education, government service, industry, and commerce.¹⁶⁷

Under the auspices of IFAC, the International Ethics Standards Board for Accountants (IESBA), a global independent standard setting body, develops and issues, ethical standards and pronouncements for professional accountants worldwide. It develops principle-based professional ethics standards and a conceptual framework for applying them. The standards are compiled in the Code of Ethics for Professional Accountants. The IESBA Code requires accountants to adhere to five fundamental principles: integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.¹⁶⁸

The Code of Ethics Interpretations assist in the application of the Code. The IESBA also publishes other pronouncements on ethics related matters, for advancing understanding of the ethical requirements of professional accountants.¹⁶⁹

In addition to oversight by the PIOB it also receives advice from the IESBA Consultative Advisory Group (CAG). The IESBA CAG is comprised of representatives of regulators and business and international organizations who are interested in the development of high quality international ethics standards. The International Accounting Education Standards Board (IAESB) establishes professional accounting education standards, the International Education Standards (IES), to the competence of professional accountants.

The IAESB define professional competence as "the integration and application of (a) technical competence, (b) professional skills, and (c) professional values, ethics, and attitudes".¹⁷⁰

166 International Federation of Accountants; "Member Organizations and Country Profiles," <https://www.ifac.org/about-ifac/membership/member-organizations-and-country-profiles>.

167 Australia: Chartered Accountants Australia and New Zealand, CPA Australia, Institute of Public Accountants. USA: American Institute of Certified Public Accountants, Institute of Management Accountants. Canada: Chartered Professional Accountants Canada. UK: Association of Accounting Technicians, Chartered Institute of Management Accountants, Chartered Institute of Public Finance and Accountancy, Institute of Chartered Accountants in England and Wales, Institute of Chartered Accountants of Scotland, Institute of Financial Accountants. Association of Chartered Certified Accountants (ACCA)

168 The Restructured International Code of Ethics for Professional Accountants (including International Independence Standards) will come into effect 15 June 2019. The Restructured Code is available

169 International Accounting Education Standards Board (IAESB), "About IAESB," <https://www.iaesb.org/about-iaesb>.

170 Sections 17-18 International Accounting Education Standards Board, "Handbook of International Education Pronouncements," The International Federation of Accountants (IFAC), <https://www.ifac.org/publications-resources/2017-handbook-international-education-pronouncements>.

International Education Standards establish requirements for (a) entry to professional accounting education programs, (b) IPD of aspiring professional accountants, and (c) CPD of professional accountants. The Association of Chartered Certified Accountants (ACCA) is a professional accountancy organisation that has more than 80 global partnerships with accountancy bodies, universities and international donor communities.¹⁷¹

The ACCA's mission is to be a global leader in the profession by providing opportunity and open access to people of ability wherever they are in the world; supporting and promoting the highest ethical, governance and professional standards; and advancing the public interest.¹⁷²

The ACCA has a structure for levels of accountancy qualifications¹⁷³ that incorporate partnerships with national accountancy bodies. These joint exam partnerships allow trainees to qualify using the ACCA Qualification Structure. The ACCA offers to members the Chartered Certified Accountant qualification via its joint exam partnerships.

The ACCA's Rulebook is published annually and contains the organisation's by-laws, regulations and the Code of Ethics and Conduct. Members and students of the ACCA are required to comply

with the ACCA's regulations, and Code of Ethics and Conduct.

The IESBA Code of Ethics for Professional Accountants forms the basis of the ACCA's Code of Ethics and Conduct (with amendments). The Code is binding on members and students; it defines ethical principles¹⁷⁴, and provides a framework for addressing ethical problems, including liability for disciplinary action.¹⁷⁵ The regulations include eligibility criteria for membership, practising obligations, CPD requirements, complaint handling provisions and disciplinary processes.¹⁷⁶ Under the ACCA's by-laws, two committees oversee disciplinary action with regard to its ethical standards, the Disciplinary Committee and Appeal Committee.

Organisational relationships exist between the ACCA and IFAC, the Confederation of Asia Pacific Accountants (CAPA), the ASEAN Federation of Accountants (AFA), the Fédération des Experts Comptables Européens (FEE) and the Pan African Federation of Accountants (PAFA).

The Global Accounting Alliance (GAA) draws together ten¹⁷⁷ accounting institutes from around the world, to promote quality services, share information and collaborate on important international issues.¹⁷⁸

171 The ACCA has more than 200,000 fully qualified members and 486,000 students.

172 ACCA Qualification structure and requirements (2018) <https://www.accaglobal.com/an/en/student/getting-started/acca-qualification-structure.html>.

173 Benchmarked to Master's level and the ACCA has UK Royal Charter.

174 integrity objectivity professional competence and due care confidentiality professional behaviour

175 Association of Chartered Certified Accountants, "Rulebook 2018," (2018), https://www.accaglobal.com/content/dam/ACCA_Global/Members/Doc/rule/Rulebook-effective-from-1-July-2018.pdf.

176 ACCA's Technical Advisory service for clarification on any aspect of the Rulebook.

177 The American Institute of Certified Public Accountants (AICPA), Chartered Accountants Ireland (CAI), Chartered Professional Accountants Canada (CPA Canada), Hong Kong Institute of Certified Public Accountants (HKICPA), Chartered Accountants Australia and New Zealand (CA ANZ), Institute of Chartered Accountants in England and Wales (ICAEW), Institute of Chartered Accountants of Scotland (ICAS), Institut der Wirtschaftsprüfer in Deutschland e.V. (IDW), The Japanese Institute of Certified Public Accountants (JICPA), South African Institute of Chartered Accountants (SAICA).

178 Global Accounting Alliance, <https://www.globalaccountingalliance.com/about/>, established November 2005 as a company limited by guarantee registered in England and Wales. Through the intutional bodies, membership stands at 1,000,000 individuals in over 180 countries.

By collaborating with institutional members, the GAA works with national regulators, governments and stakeholders. At an international level, the GAA collaborates with other international bodies, especially the IFAC.¹⁷⁹ Professional support is available for members of the GAA when working in another country covered by the GAA.¹⁸⁰ GAA Accounting is published bi-monthly by the Global Accounting Alliance and contains articles from member institutes.¹⁸¹

Chartered Accountants Worldwide (CAW) has a primary focus on institutional membership to connect chartered accountants with one another “to support, develop and promote the vital role that Chartered Accountants play throughout the global economy”.¹⁸² Member bodies include the Chartered Accountants Australia and New Zealand and the Institute of Chartered Accountants in England and Wales (ICAEW). Through its institutional members, the CAW promotes standards of professional and ethical practice, creates opportunities for Chartered Accountants globally and shares expertise to “maintain Chartered Accountancy’s position as the preeminent qualification for those in accountancy, finance and business”.¹⁸³

The Edinburgh Group is a coalition of 16 accountancy bodies with a mission “to ensure that the development of the international accountancy profession meets the needs of its diverse stakeholders, reflecting progress in the global economy and society at large”.¹⁸⁴

The Group’s central focus is to identify the “issues affecting SMP/SME, DN and PAIB in the context of the international advancement of the accountancy profession and help to develop effective policies on these for action by IFAC”.¹⁸⁵

Membership is open to organisations that are members of IFAC or credible regional or national accountancy organisations that share the Group’s vision and objectives.¹⁸⁶

As a forum for exchange of perspectives on advancing the accounting profession, the Group pursues diverse representation in IFAC, formulates policy for consideration by IFAC and engages with others outside of IFAC.¹⁸⁷

179 Ibid.

180 Ibid.

181 "Gaa Accounting," in The Journal of the Global Accounting Alliance (2018).

182 Chartered Accountants Worldwide, "About Us," <https://charteredaccountantsworldwide.com/about-us/>

183 Others include Chartered Accountants Ireland (CAI), Institute of Chartered Accountants of Scotland (ICAS) *ibid.*.

184 Formed in 2000, members include: The Association of Chartered Certified Accountants (ACCA), The Association of National Accountants of Nigeria (ANAN), Corpul Expertilor Contabili si Contabililor Autorizati din Romania (CECCAR), Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili (CNDCEC), CPA Australia, European Federation of Accountants and Auditors for SMEs (EFAA), Interamerican Accounting Association (IAA), Instituut van de Bedrijfsrevisoren (IBR-IRE), Institute of Chartered Accountants of India (ICAI), Institute of Certified Public Accountants of Greece (SOEL), Institute of Certified Public Accountants in Ireland (CPA), Institute of Certified Public Accountants in Israel (CPA), Ordre des Experts Comptables de Tunisie (OECT), Nederlandse Beroepsorganisatie van Accountants (NBA), The South African Institute of Professional Accountants (SAIPA), TURMOB (Turkey) Edinburgh Group, <http://www.edinburgh-group.org/>.

185 Section 3.2 "Edinburgh Group Constitution," (16 November 2009), <http://www.edinburgh-group.org/about-us/governance.aspx>.

186 Section 4 *ibid.*

187 Section 3.3 *ibid.*

AUSTRALIAN (NSW) ACCOUNTANTS

REGULATORY STRUCTURE

Government Regulation

Technical accounting standards, professional accounting standards and oversight carried out by government bodies contribute to the regulation of the Australian accounting profession. These components form a co-regulatory environment that includes regulation by the Australian Securities and Investments Commission (ASIC), the Australian Taxation Office (ATO), the Tax Practitioners Board and the Accounting Professional and Ethical Standards Board (APESB) together with the three professional accounting bodies.¹⁸⁸

The definition of a 'qualified accountant'¹⁸⁹ is someone who belongs to one of the described professional bodies at the declared membership classification, and complies with that body's continuing professional education requirements.¹⁹⁰ The professional bodies are

Chartered Accountants Australia and New Zealand (CA ANZ)¹⁹¹, CPA Australia¹⁹², and Institute of Public Accountants (IPA).¹⁹³

Technical accounting standards are the responsibility of the Australian Accounting Standards Board¹⁹⁴ (AASB), an Australian Government agency formed under the Australian Securities and Investments Commission Act 2001 (Cth) that develops and maintains financial reporting standards applicable to entities in the private and public sectors of the Australian economy. The mission of the AASB centres on principles-based Australian accounting and external reporting standards and a contribution to the development of an internationally applicable set of accounting and external reporting standards.¹⁹⁵

188 Accounting professionals involved in the provision of advice relating to superannuation and financial services require an Australian Financial Services Licence, if an accountant provides tax agent services registration with the Tax Practitioners Board is required and insolvency advisors are regulated by the Australian Financial Security Authority (AFSA). The Australian Stock Exchange (ASX) requires financial statements to be prepared in accordance with AASB accounting standards.

189 As defined and used by ASIC with regard to certifying that an investor has the income or assets to make a decision about an offer of securities without a disclosure document.

190 A 'qualified accountant' is defined in s88B of the Corporations Act as a person in a class declaration made by ASIC, which is made under class order [CO 01/1256] Australian Securities and Investments Commission, "ASIC Corporations (Qualified Accountant) Instrument 2016/786," (28 September 2016), <https://www.legislation.gov.au/Details/F2016L01541>. It is useful for our examination of professional associations across jurisdictions to note that under the class order members of eligible foreign professional bodies may also be deemed qualified accountants for the purpose of providing a certificate. Recognised international bodies for this purpose are The American Institute of Certified Public Accountants; Association of Certified Chartered Accountants (United Kingdom); Canadian Institute of Chartered Accountants; Institute of Chartered Accountants of New Zealand; The Institute of Chartered Accountants in England and Wales; The Institute of Chartered Accountants in Ireland; and The Institute of Chartered Accountants of Scotland.

191 Declared membership classifications CA, ACA and FCA.

192 Declared membership classifications CPA and FCPA.

193 Declared membership classifications AIPA, MIPA and FIPA.

194 Note that Australian Auditing and Assurance Standards Board sets Australian auditing standards, it is beyond the scope of this mapping document to examine the standards and regulations that affect auditors. Australian Prudential Regulation Authority (APRA) is responsible for the regulation of banks and insurers.

195 Australian Accounting Standards Board, "About Us," <http://www.aasb.gov.au/About-the-AASB.aspx>.

The agency's statutory functions¹⁹⁶ include evaluating proposed standards; making accounting standards;¹⁹⁷ and contributing to the development of a single set of accounting standards for worldwide use. The AASB is accountable to the Minister regarding the operations of the AASB and the Office of the AASB, through the Chairman. The Office of the AASB provides technical and administrative services, information and advice to the AASB. The Office is responsible to the Minister for financial management of the Office of the AASB, the Chairman of the AASB is also the chief executive officer of the Office.

The Financial Reporting Council (FRC)¹⁹⁸, also responsible to the Minister, appoints Board members to the AASB, and provides broad strategic direction and advice to the AASB.¹⁹⁹ The FRC is an independent statutory body²⁰⁰ with oversight functions for accounting and auditing standards to facilitate the development of high quality accounting standards, it advises the Minister on these as they impact the financial reporting system.²⁰¹

It has oversight of the process for setting accounting standards in Australia and monitors

the standards to assess their continued relevance and effectiveness in achieving their objectives. Monitoring the development of international accounting standards, furthering the development of an internationally applicable set of accounting standards, and promotion of international best practice in Australia if determined to be in the best interests of the Australian economy.²⁰² The FRC does not have power to direct the AASB in relation to the development, or making, of a particular standard, nor does it have the power to veto a standard.²⁰³ The ASIC enforces the accounting standards issued by the AASB under the Corporations Act 2001.²⁰⁴

Professional Standards Councils (PSCs) are independent statutory bodies established within the Australian state and territory jurisdictions.²⁰⁵ The purpose of the PSCs and their enabling legislation is a combination of the creation of schemes to limit the civil liability of professionals and others, consumer protection, and improved occupational standards.²⁰⁶

196 Section 227 Australian Securities and Investments Commission Act 2001.

197 Section 334 of the Corporations Act 2001.

198 See description below.

199 AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001 - SECT 225

200 established by Part 12 of the Australian Securities and Investments Commission Act 2001.

201 Division 1 Subdivision A of Part 12 of the Act

202 225 (2)

203 225(5)-(6) Restrictions on powers.

204 to issue class orders, or specific orders to a company, to give relief from certain requirements of the Act

205 Links to Professional Standards Legislation in Australian States and Territories <https://www.psc.gov.au/legislation> Each PSC has the same 11 members, appointed by the Attorneys-General. NSW and Victoria have two members each, while all other states and territories and the Commonwealth have one each. Professional Standards Agreement 2011 established the national framework of professional standards legislation.

206 S 3 Professional Standards Act 1994.

Through approved Professional Standards Schemes the PSCs promote professional standards in return for limited civil liability. This statutory scheme of limited liability is a unique example of meta-regulation that improves consumer protection by improving the self-regulation of professions and reduces the need for further legislative interventions. The PSCs have responsibility for approval, monitoring and enforcing of the schemes and collaborate with professional associations to develop self-regulation initiatives with the purpose of improved professionalism.²⁰⁷ The PSCs supervise the compliance of each association with their scheme and the Professional Standards legislation. As part of this supervisory role the PSCs have powers including, but not limited to, to make recommendations for improvement; review a scheme; conduct a compliance audit; revoke an association's Professional Standards Scheme; and commence proceedings for prosecution of alleged offences.

CA ANZ, CPA Australia, and IPA have Professional Standards Schemes²⁰⁸, recognising a commitment to the improvement of professional standards and the protection of Australian consumers through obligations that the association will place on members, in return for limits to civil liability. Increased consumer protection results from the requirement that professionals covered by an

association's Professional Standards Scheme have insurance coverage to the liability limit. Professional associations are committed to meeting the statutory requirements for the period of the Scheme. The associations regulate their members via codes of ethics and practice, complaints resolution processes and disciplinary measures, placing entry and continuing education obligations on members, and maintaining risk management strategies.

With regard to the development of self-regulation of occupational associations, PSCs provide advice about codes of ethics, codes of practice, membership requirements, management, discipline of members, continuing occupational education, and the resolution of complaints, among others.²⁰⁹

Professional Associations

ASIC declared professional bodies regulating the accounting profession in Australia are CPA Australia, CA ANZ and the IPA²¹⁰. As described above the three professional bodies have Professional Standards Schemes that place obligations on the associations to ensure members adhere to entry requirements, continuing education, codes of ethics and practice, and have in place complaints resolution processes and disciplinary measures.

207 Division 3 Professional Standards Act 1994.

208 Professional Standards Councils, "Associations with a Current Professional Standards Scheme," <https://www.psc.gov.au/professional-standards-schemes/scheme-documents>. CA ANZ operates separate Professional Standard Schemes in each state and territory (all of the schemes are substantially similar); the IPA has a Professional Standards Scheme in New South Wales with recognition in the other Australia jurisdiction; CPA Australia's Professional Standards Scheme has recently been approved.

209 43 Professional Standards Act 1994.

210 We note also that the three accounting bodies established the Joint Accounting Bodies as a united forum for making submissions to government bodies, standard setters and regulators.

The three associations are all members of IFAC, which obliges them to adhere to international standards.

CPA Australia is part of the broader global CPA membership program²¹¹, which aims to lead on issues relating to the accounting profession and promote professional accounting skills based on the internationally recognised CPA qualification. The CPA designation represents specially qualified accountants, with high professional competence, who must follow a strict code of conduct set by CPA Australia.²¹²

Core activities of the association centre on education, training, technical support and advocacy. Members are required to adhere to the association's Constitution and By-Laws, the Code of Professional Conduct and other applicable regulations.²¹³ The professional and ethical requirements for CPA Australia members are contained in the APES.

Chartered Accountants Australia and New Zealand²¹⁴ is a professional body representing chartered accountants within Australia and New Zealand. The objectives of the CA ANZ include advancing the theory and practice of accountancy through education and training,

preserving the professional independence of accountants, promoting quality, expertise and integrity in the profession, and prescribing high standards of practice and professional conduct.²¹⁵ The association offers professional support and educational opportunities to members, advocacy, and networking events. It monitors via practice reviews of members performing services to the public to uphold consumer protection. Apart from its membership in IFAC, the CA ANZ collaborates with the GAA, CAW and the ACCA. The Royal Charter, By-Laws and Regulations of the CA ANZ govern members.²¹⁶

Institute of Public Accountants (IPA) is a professional accounting body focussed primarily on representing small to medium enterprise with a majority of its members IPA members working in the small business sector.²¹⁷ The IPA's governance structure similarly follows the IFAC requirements and places an obligation on members to adhere to its constitution and by-laws.²¹⁸ The IPA places expectations on members to carry out their activities to high standards in accordance with those set by the associations or those established by the Accounting Professional and Ethical Standards Board (APESB).

211 163,750 members in 125 countries.

212 CPA Australia, "About Us," <https://www.cpaaustralia.com.au/about-us>.

213 "CPA Australia Constitution," (22 May 2018), https://www.cpaaustralia.com.au/~/_/media/corporate/allfiles/document/about/cpa-australia-constitution-2018.pdf?la=en; "CPA Australia By-Laws," (23 August 2018), https://www.cpaaustralia.com.au/~/_/media/corporate/allfiles/document/about/by-laws-effective-23-august.pdf?la=en.

214 121,418 members globally.

215 Chartered Accountants Australia and New Zealand, "Royal Charter."

216 Ibid.; "Australian Regulations," [https://www.charteredaccountantsanz.com/member-services/member-obligations/regulations-and-guidance/australian-regulations; A2 By-Laws \(July 2016\).](https://www.charteredaccountantsanz.com/member-services/member-obligations/regulations-and-guidance/australian-regulations; A2 By-Laws (July 2016).)

217 The IPA acquired the Institute of Financial Accountants (UK) in 2015, forming the IPA group. It currently has more than 36,000 members and students in over 80 countries.

218 Institute of Public Accountants, By-Laws, (6 September 2018), <https://www.publicaccountants.org.au/media/1790265/MASTER-By-Laws-V-262-re-brand.pdf>; Constitution, (August 2018), <https://www.publicaccountants.org.au/media/1774897/MASTER-Constitution-V20.pdf>.

EDUCATION, TRAINING AND ADMISSION

Government Regulation

Professional Associations

As members of IFAC the CPA, CA ANZ and IPA are required to comply with IFAC's International Education Standards (IESs) established by the International Accounting Education Standards Board (IAESB). The standards describe the competence areas required for the education of professional accountants, including accredited higher education programs and the programs offered by the associations. The standards are described for entry to professional accounting education programs; Initial Professional Development of aspiring professional accountants; and Continuing Professional Development ("CPD") of professional accountants. Professional competence as performance a role to a defined standard requires each of the following technical competence, professional skills, and professional values, ethics, and attitudes.²¹⁹

Using the definition of 'qualified accountant' established by ASIC as someone who belongs to Chartered Accountants Australia and New Zealand, CPA Australia, or Institute of Public Accountants (IPA) at the declared membership classification, and complies with that body's continuing professional education requirements. Different categories of membership for the three legally recognised professional associations in Australia require different levels of qualification but generally, prospective members need to hold educational qualifications that are approved by the associations.²²⁰ For each of the membership classifications of the professional associations²²¹ education and training requirements include an approved university degree; completion of the respective CPA; CA; or IPA Program; completion of three years' practical experience (with additional experience required for advancement to Fellow designations); and fulfilment of CPD requirements of 120 hours during each three year period of membership.

In addition to the above, the ACCA Qualification is recognised by the CA ANZ, CPA Australia and IPA. ACCA Exams are offered via the ACCA's joint exam partnerships to achieve the Chartered Certified Accountant designation.

219 International Accounting Education Standards Board, "Handbook of International Education Pronouncements", p 13.

220 See for example, Chapter 3 Institute of Public Accountants, By-Laws., Chartered Accountants Australia and New Zealand, CR 1 – Admissions, Readmissions and Membership and Notification Obligations (12 September 2018).

221 CA ANZ: Chartered Accountant (CA), Fellow CA (FCA) and; CPA: Australia Certified Public Accountant (CPA) and Fellow CPA (FCPA) from; and IPA: and Member Institute of Public Accountants (MIPA) Fellow IPA (FIPA). Noting that the classification of Associate Institute of Public Accountants (AIPA) of the IPA is an entry-level classification that requires a degree from an approved institution prior to commencement of the IPA program. CA ANZ has recently closed the Associate Chartered Accountant (ACA) entry to membership option.

ETHICS

Government Regulation

The Professional Standards Schemes of the CA ANZ, CPA Australia, and IPA set out the self-regulatory codes of ethics and practice of the associations with meta-regulatory oversight by the PSC through advice and review of the internal processes implemented by the associations.

Professional Associations

Ethical standards for accountants are developed by the Australian Professional and Ethical Standards Board (APESB).²²² CPA Australia, Chartered Accountants ANZ (CA ANZ) and the Institute of Public Accountants (IPA) are members of the APESB. The APES 110 Code of Ethics for Professional Accountants is issued by the APESB and incorporates the IFAC Code of Ethics for Professional Accountants (IESBA Code) and contains some additional Australian definitions and paragraphs.²²³ APESB makes submission to the IESBA to influence the development of international standards.

The APESB standards describe the responsibility of accountants to act professionally. Each of

the standards contain explanatory information about their applications. The IFAC standards form the basis for the standards issue by the APESB. The four categories of standards are: APES 100 series, APES 200 series, APES 300 series and APES 400 series.²²⁴

The Code of Ethics for Professional Accountants focuses on the following fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.²²⁵ The standards must be followed by all members of CPA Australia, CA ANZ and IPA, with each of the associations responsible for enforcing adherence to the standards and for instigating disciplinary proceedings for breaches of the standards. The CA ANZ, CPA Australia and IPA all provide their members with independent ethics support and advice.²²⁶

A restructured Australian Code of Ethics for Professional Accountants (including Independence Standards) has been released by the APESB. The revised Code includes a conceptual framework to support accountants and will be effective from 1 January 2020.²²⁷

²²² Established in 2006 by CA ANZ and CPA Australia, with IPA joining the same year. The associations share funding.

²²³ For example, the fundamental principles reflect the international standards. Integrity, Objectivity, Professional competence and due care Confidentiality Professional behaviour

²²⁴ Accounting Professional and Ethical Standards Board, "Issued Standards," <https://www.apesb.org.au/page.php?id=12>.

²²⁵ Compiled APES 110 Code of Ethics for Professional Accountants (September 2017), https://www.apesb.org.au/uploads/standards/apesb_standards/20092017153656_Compiled_APES_110_Sept17.pdf.

²²⁶ CPA Australia offers 'Ethi-call' a confidential phone service for members, CA ANZ offers confidential advice and support on professional and ethical via the CA Advisory Group, IPA offers members written opinions within 24 hours via Professional Assist.

²²⁷ The revised code includes provisions relating to Non-Compliance with Laws and Regulations (NOCLAR) SECTION 260 Accounting Professional and Ethical Standards Board, APES 110 Code of Ethics for Professional Accountants (Including Independence Standards) (November 2018), https://www.apesb.org.au/uploads/standards/apesb_standards/02112018001157_APES_110_Restructured_Code_Nov_2018.pdf.

DISCIPLINE

Government Regulation²²⁸

The PSC requires associations operating under a scheme to adopt establish and monitor consumer complaint and discipline systems. Such systems need to be consistent with the Model Code²²⁹ and the *Model Code Policy Statement on Complaints and Discipline Systems* issued by the PSC.²³⁰ The policy provides guidance on developing and implementing complaints and discipline systems.

Professional Associations

CPA Australia, CA ANZ and IPA all have investigation and disciplinary processes for non-compliance with constitutional provisions, professional and ethical standards, by-laws and other regulations and have hierarchies of penalties.²³¹ In line with their Professional Standards Schemes all of the associations have disciplinary proceedings based on initial written complaint, investigation, and form hearing before disciplinary tribunals.²³² Sanctions include expulsion, suspension, and fine.

UK (ENGLAND) ACCOUNTANTS

REGULATORY STRUCTURE

Government Regulation

The regulation of the accountancy profession in the UK is premised on a self-regulatory system with oversight by the Financial Reporting Council (FRC).²³³ The FRC is an independent regulator that has statutory oversight responsibility for auditors and plays a regulatory role over the broader accounting profession based on agreement with the UK's professional accounting associations. This role of oversight by the FRC of the professional organizations' regulation of members is a non-statutory role that exists between the FRC and the associations.²³⁴

The agreement allows the FRC to review and make recommendations about matters including on education, training, continuing professional development, ethical and professional conduct and discipline. The professional associations are required to consider recommendations made by the FRC, and respond by either implementing changes or providing written reasons for not doing so.

228 ASIC regulates and pays a role in disciplinary matters for auditors, holders of financial services licenses and others. The Tax Practitioners Board deals with complaints about registered tax agents.

229 Schedule 1 Professional Standards Act (NSW).

230 Professional Standards Councils, Policy Statement on Complaints and Discipline Systems, (August 2014), <https://www.psc.gov.au/sites/default/files/Complaints%20and%20Discipline%20Systems.pdf>.

231 Section 39 CPA Australia, "CPA Australia Constitution".

232 CA ANZ has a Professional Conduct Committee, Disciplinary Tribunal and the Appeals Tribunal Chartered Accountants Australia and New Zealand, CR 8 – Disciplinary Procedures, (23 August 2018).. The IPA has a Disciplinary Tribunal under IPA Chapter 7 Investigations and disciplinary procedures. Formal outcomes are published in the IPA Journal "Public Accountant", CPA Australia has General Manager Professional Conduct (GMPC) to review complaints and a Disciplinary Tribunal.

233 Under the Companies Act of 2006 the FRC oversees the regulation of statutory auditors by public accountancy organizations (Recognized Supervisory Bodies (RSBs) and Recognized Qualifying Bodies (RQBs)). In practice, many of the regulations that apply to auditors have relevance to the broader accountancy profession but for the purposes of this report, we focus only on the regulation of the accountancy profession.

234 The agreement for the FRC to oversee the accountancy regulation carried out by professional associations was made between the FRC and the Consultative Committee of Accountancy Bodies (CCAB) (except for the Chartered Institute of Management Accountants). The associations that are regulated by the FRC via agreement are: Association of Chartered Certified Accountants (ACCA), Chartered Accountants Ireland (CAI), Chartered Institute of Management Accountants (CIMA), Chartered Institute of Public Finance and Accountancy (CIPFA), Institute of Chartered Accountants in England and Wales (ICAEW), and Institute of Chartered Accountants of Scotland (ICAS).

The FRC promotes high quality corporate governance and reporting. It is responsible for setting the Corporate Governance and Stewardship Codes. It determines standards for accounting, auditing and actuarial work. The objective of the Financial Reporting Standards is to “enable users of accounts to receive high-quality, understandable financial reporting proportionate to the size and complexity of the entity and users’ information needs”.²³⁵ It has independent disciplinary arrangements for accountants for matters that affect the public interest, via the Accountancy Scheme, and oversees the regulatory activities of the accountancy professional bodies.²³⁶ The FRC’s Codes and Standards Committee provides advice to the FRC Board on accounting, auditing, governance codes Stewardship and Actuarial technical standards. The Conduct Committee oversees “professional discipline, overseeing the regulation of accountants and actuaries, monitoring of recognised supervisory and qualifying bodies and audit quality reviews”.

Professional Associations

The report describes the following England based professional bodies that agree to the regulatory oversight of the FRC: Association of Chartered Certified Accountants (ACCA), Chartered Institute of Management Accountants (CIMA), Chartered Institute of Public Finance and

Accountancy (CIPFA), and Institute of Chartered Accountants in England and Wales (ICAEW). The associations are all members of IFAC, which obliges them to adhere to international standards. All of the associations set eligibility criteria for membership, practising obligations, CPD requirements, complaint handling provisions and disciplinary processes.

The Consultative Committee of Accountancy Bodies (CCAB) has five members - ICAEW, ACCA, CIPFA, ICAS and Chartered Accountants Ireland who collaborate on matters affecting the profession and the wider economy in the public interest. The objectives of the CCAB include formulating joint approaches on behalf of the UK accounting profession to the FRC and other relevant bodies on matters of significance; ensuring CCAB retains a collective voice, representing views to international standard setters, regulators and other bodies.

The ACCA uses its network to promote the accountancy profession as one that is effective, ethical, by ensuring members are professionally qualified who adhere to high ethical, governance and professional standards to advance the public interest. Members are required to comply with the ACCA’s regulations, and Code of Ethics and Conduct, the contents of which fulfil the ACCA’s obligations under its membership with IFAC.

²³⁵ Financial Reporting Council, Foreword to Accounting Standards, (March 2018), [https://www.frc.org.uk/getattachment/d0676485-e69c-4cad-bdd1-3c2edcdc942b/Foreword-to-Accounting-Standards-\(March-2018\).pdf](https://www.frc.org.uk/getattachment/d0676485-e69c-4cad-bdd1-3c2edcdc942b/Foreword-to-Accounting-Standards-(March-2018).pdf).

²³⁶ "Oversight of the Accountancy Profession," (2018).

The Chartered Institute of Management Accountants (CIMA) is the largest professional body of management accountants and is governed by Royal charter, byelaws and regulations. CIMA ensures members are competent, trusted and working within the public interest through regulation, monitoring and where necessary disciplinary procedures. Recently with the American Institute of Certified Public Accountants (AICPA), CIMA established the Chartered Global Management Accountant (CGMA) designation and the Association of International Certified Professional Accountants. The Chartered Institute of Public Finance and Accountancy (CIPFA) is a professional accountancy body focussed on public finance that supports the implementation of international public sector accounting standards.²³⁷ It provides education and training for professional accountants with its qualifications relating to public finance taught by CIPFA Education and Training Centre. CIPFA is involved in standard setting internationally through the International Public Sector Accounting Standards Board (IPSASB) sets International Public Sector Accounting Standards (IPSAS).

The Institute of Chartered Accountants of England Wales (ICAEW) is a voluntary professional association. The ICAEW's Principal Bye-laws govern its operations and describe the association's objectives as the advancement of the profession of accountancy;

maintenance of high standards of practice and professional conduct by all members, and the maintenance of the professional independence of accountants.²³⁸

EDUCATION, TRAINING AND ADMISSION

Government Regulation

The professional associations govern the educational requirements of members, through agreement with the FRC the educational standards are subject to oversight by the regulator.

Government Regulation

As members of IFAC the professional accountancy qualifications set by the accountancy associations need to meet the IAESB's requirements as set out in the IES. Educational entry requirements need to permit only those with a reasonable chance of successfully completing the education program. The IES describes the educational requirements for Initial Professional Development including technical competence, professional skills, levels of proficiency, and the professional values, ethics, and attitudes that aspiring professional accountants need to achieve by the complete of the program.

²³⁷ Established in 1885, CIPFA has 14,000 members who work in public services.

²³⁸ Institute of Chartered Accountants in England and Wales, Principal Bye-Laws, (10 October 2018), <https://www.icaew.com/membership/regulations-standards-and-guidance/bye-laws/principal-by-laws>.

The standards set must require practical experience with monitoring and supervision provisions, and formal assessment to show the appropriate level of professional accountant has been achieved.²³⁹

The IES also contains provisions relating to the CPD required for professional accountants to develop and maintain the professional competence. The associations have a responsibility to promote commitment to lifelong learning, facilitate access to CPD and develop measurement, monitoring, and compliance mechanisms to guide professional accountants.²⁴⁰ The associations place a requirement on members to undertake CPD and to demonstrate that they have done so. Generally 40 hours of CPD in a calendar year is expected, with 20-21 hours verifiable.²⁴¹

ETHICS

Professional Associations

The professional associations establish the ethical requirements of their members.²⁴²

As members of IFAC the associations must adopt an ethical code no less stringent than

the IESBA Code.²⁴³ The codes of ethics are binding on members and incorporate the IESBA principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.²⁴⁴ In addition to the professional codes, the associations have different methods for supporting members to uphold the ethical and professional standards expected of them. For example, CIPFA publishes *Ethics and You*, *Ethics Case Studies* and the provision of ethical advice to assist members and in applying the ethical standards to practice.²⁴⁵

DISCIPLINE

Government Regulation

The Accountancy scheme²⁴⁶ is established and overseen by the FRC²⁴⁷ to deal with potential misconduct that affects the public interest. It operates independently of the disciplinary mechanisms in place to regulate members of the professional bodies and all other potential misconduct matters are dealt with by the professional associations. The FRC has an agreement with the professional associations to oversee their disciplinary systems for members.

239 International Accounting Education Standards Board, "Handbook of International Education Pronouncements".

240 Ibid.

241 For example, Institute of Chartered Accountants in England and Wales, Continuing Professional Development, <https://www.icaew.com/-/media/corporate/files/members/cpd/quick-guide-to-cpd.ashx>, Association of Chartered Certified Accountants, "Your Guide to CPD," <https://www.accaglobal.com/gb/en/member/cpd/your-guide-to-cpd.html>.

242 The FRC establishes mandatory Ethical Standards (ES) that must be complied with in the conduct of audits based on its standard-setting authority under the Companies Act 2006. The FRC considers compliance with ES will result in compliance with the IESBA's Code of Ethics.

243 Institute of Chartered Accountants in England and Wales, "Code of Ethics," <https://www.icaew.com/technical/ethics/icaew-code-of-ethics/icaew-code-of-ethics>.

244 Chartered Institute of Management Accountants, "Cima Code of Ethics," (1 January 2015); Chartered Institute of Public Finance & Accountancy, "Cipfa Standard of Professional Practice on Ethics," (2018); Association of Chartered Certified Accountants, Code of Ethics, (2012), <https://www.accaglobal.com/content/dam/acca/global/PDF-members/2012/2012c/CofEC.pdf>.

245 Chartered Institute of Public Finance & Accountancy, "Ethics and You," (2018).

246 Financial Reporting Council, The Accountancy Scheme (8 December 2014). The Scheme covers the ICAEW, CIMA, CIPFA, ICAI, ACCA, and ICAS.

247 Via the FRC's Conduct Committee.

The objectives of the Accountancy Scheme are to “protect the public, maintain public confidence in the accountancy profession and uphold proper standards of conduct.”

The scheme permits the investigation of members and member firms’ conduct in the course of their professional activities and disciplinary proceedings if deemed appropriate following investigation.²⁴⁸

Professional Associations

The professional associations, through their charters and by-laws, all have systems of investigation and discipline for the failure of members to comply with professional conduct. For example the ICAEW has committees of investigate, discipline and appeal and specific discipline bye-laws that guide the procedures.²⁴⁹

USA (NY STATE) ACCOUNTANTS

REGULATORY STRUCTURE

Government Regulation

The regulation of professional accountants in the United States (Certified Public Accountant (CPA) is coordinated at the state level by boards of accountancy and professional associations

with federally established technical accounting standards. There is some national coordination of state boards via the National Association of State Boards of Accountancy and the national professional associations, the American Institute of Certified Public Accountants (AICPA) and the Institute of Management Accountants (IMA), both of which are members of IFAC. Licensing, educational requirements (including CPD), ethical standards and disciplinary processes are undertaken by the state boards.

The minimum standards for financial accounting and reporting are set by the Federal Accounting Standards Advisory Board (FASAB)²⁵⁰ and the Governmental Accounting Standards Board (GASB). These Statements of Financial Accounting Standards form the basis of US GAAP. Oversight and funding for both boards is by the Financial Accounting Foundation (FAF). The GASB, FASB, and FAF aim “to establish and improve financial accounting and reporting standards to provide useful information to investors and other users of financial reports and educate stakeholders on how to most effectively understand and implement those standards.”²⁵¹

248 Financial Reporting Council, The Accountancy Scheme. s 1(2).

249 Institute of Chartered Accountants in England and Wales, Disciplinary Bye-Laws, (15 October 2018), <https://www.icaew.com/-/media/corporate/files/members/regulations-standards-and-guidance/icaew-disciplinary-bye-laws-october-2018.ashx?la=en>.

250 Securities and Exchange Commission recognises FASB as the authority for establishing GAAP. The Public Accounting Oversight Board oversees the auditing profession.

251 Federal Accounting Standards Advisory Board, "About the Fasb," <https://www.fasb.org/facts/>; Governmental Accounting Standards Board, "About the GASB," <https://www.gasb.org/jsp/GASB/Page/GASBSectionPage&cid=1176168081485>.

The state Boards of Accountancy and the AICPA recognise the FASB standards as authoritative.²⁵² The USA does not use the IFRS, is the accounting framework used by other countries, preferring the rule based format of GAAP. The GAAP has been codified in the Accounting Standards Codification.

New York State Government Regulation

New York State's licensing requirements are contained in the Education Law²⁵³ and the Regulations of the Commissioner²⁵⁴. The State Board for Public Accountancy is appointed to assist the State Board of Regents and the Education Department on matters related to professional licensing and professional conduct.²⁵⁵ Under this system the State Education Department, under the Regent regulated the professions through an Office of the Professions and the State Boards for the Professions. Under New York law, the professional Boards oversee licensing, examinations, conduct disciplinary proceedings and other professional conduct matters that the Board of Regents prescribes.²⁵⁶

Professional Associations

The National Association of State Boards of Accountancy (NASBA)²⁵⁷ aims to "enhance the effectiveness and advance the common

interests of the Boards of Accountancy". The NASBA works with the state based Boards of Accountancy in the United States to promote public trust in the profession through effective state based regulation. The support it provides to the Boards of Accountancy includes cooperation with national and international standard setters, regulators and professional organizations; support for the regulation of licensees by the Boards, monitoring of issues relevant to the profession and regulation, and promotes uniform laws and rules across the Boards of Accountancy.²⁵⁸

NASBA's supports the Boards in maintaining ethical standards for their licensees and provides support for education and training, particularly through the work of NASBA Center for the Public Trust (CPT)²⁵⁹, which promotes business ethics and ethical leadership in institutions and organisations. It hosts seminars and conferences, offers certification for completion of ethical leadership courses and gives awards for ethical practice and leadership.²⁶⁰ NASBA promotes the CPA licence.

The American Institute of Certified Public Accountants (AICPA) is the national professional organization for CPAs in the US.

252 Federal Accounting Standards Advisory Board, "About the Fasb".

253 Article 149, Section 7405 <http://www.op.nysed.gov/prof/cpa/part70.htm#exam>.

Pt 70 < <http://www.op.nysed.gov/prof/cpa/part70.htm#exam> >.

254 Pt 70 < <http://www.op.nysed.gov/prof/cpa/part70.htm#exam> >.

255 Art 149, section 7403 Education Law.

256 Article 130, Section 6508 Education Law.

257 NASBA provides licensing services to the jurisdictions of Colorado, CNMI, Georgia, New Hampshire and Puerto Rico.

258 National Association of State Boards of Accountancy, "About Us," <https://nasba.org/about/>.

259 A 501(c)(3) non-profit subsidiary of NASBA NASBA Center for Public Trust, <https://thecpt.org/>.

260 "About Us," <https://thecpt.org/about-us/>.

It has with more than 418,000 members in 143 countries, and is a member of IFAC.²⁶¹The requirements for joining the AICPA as a Certified Public Accountant are set by the Board of Accountancy of each state, and members agree to abide by the AICPA's Code of Professional Conduct and Bylaws. The AICPA determines ethical standards and CPD requirements²⁶² for its members. It also applies the Uniform CPA Examination and has an investigation and discipline system.²⁶³

The Institute of Management Accountants (IMA) represents management accounting professionals. It has established ethical, educational and CPD requirements for its members and has an investigation and discipline system. The IMA offers the Certified Management Accountant designation.

The New York State Society of CPAs (NYSSCPA) upholds the core values of integrity, professionalism, and ethics through education, the provision of resources for members, conferences and advocacy. It adopts the AICPA code of conduct for members and works collaboratively with the AICPA on disciplinary matters.

EDUCATION, TRAINING AND ADMISSION

Government Regulation

New York State licensing requirements to hold the designation of a Certified Public Accountant²⁶⁴ and practise in the jurisdiction include verified good moral character; be at least 21 years of age; meet education and examination requirements²⁶⁵; and meet experience requirements.²⁶⁶ Licensed accountants are required to maintain active registrations when providing regulated services. Internationally trained accountants may have a pathway to registration and licensing via a Mutual Recognition Agreement with the National Association of State Board for Accountancy (NASBA).

To support the competency of professional accounting services continuing education requirements of acceptable formal education amounting to either 24 hours if they are in one of the recognized subject areas or 40 hours in a combination of recognized subject areas; and four contact hours of acceptable professional ethics completed during every three calendar years.²⁶⁷

261 American Institute of Certified Public Accountants, "About the Aicpa," <https://www.aicpa.org/about.html>. It is also a member of the Confederation of Asian and Pacific Accountants and the Institute of Chartered Accountants of the Caribbean.

262 The AICPA and NASBA jointly publish CPD Standards.

263 American Institute of Certified Public Accountants, Code of Professional Conduct (15 December 2014), <https://www.aicpa.org/research/standards/codeofconduct.html>.

264 A Public Accountant license was issued under a 1959, which allowed those with the required experience to use the PA title and earn a PA license based on public accounting experience, giving PAs identical rights to practice in NYS.

265 150 hours (including B.A.) or fifteen years of public accounting experience acceptable to the State Board for Public Accountancy may be substituted for education. Candidates may apply for admission to the examination. The examination process is via the Uniform CPA Exam. The Association for the Advancement of Collegiate Schools of Business (AACSB) is an recognised accreditor of programs of study, alternative a program may be registered with the Education Department.

266 Title 8, Article 149, Section 7404 New York's Education Law available <http://www.op.nysed.gov/prof/cpa/article149.htm> and Part 70 Commissioner's Regulations <http://www.op.nysed.gov/prof/cpa/part70.htm#exam>.

267 Section 7409 of the New York State Education Law; Section 70.9 of the Regulations of the Commissioner of Education. Approved subject areas include accounting, attest, auditing, taxation, advisory services, specialised knowledge and applications related to specialized industries National Association of State Boards of Accountancy, "CPA Exam: New York," <https://nasba.org/exams/cpaexam/newyork/>.

Professional Associations

The Uniform CPA Exam is run by the AICPA. Applicants must pass the examination to qualify for a CPA certificate prior to applying for a license to practice. Each state jurisdiction determines the educational requirements to sit for the exam. CPA Examination Services²⁶⁸ administers the exam in New York State. To hold an IMA membership and the CMA designation a members needs to obtain a Bachelor's degree or professional accounting certification, minimum verifiable two years of work experience and completion of the IMA exam.²⁶⁹

The AICPA and the National Association of State Boards of Accountancy (NASBA) jointly issue Statement on Standards for Continuing Professional Education (CPE) Programs standards for CPE framework for the development, presentation, measurement, and reporting of CPE programs.²⁷⁰

ETHICS

Government Regulation

Rules of professional conduct apply to all licensed professionals in New York. General definitions of professional misconduct under the Education Law apply, and the Board of Regents has adopted rules defining unprofessional conduct for all professions. Specific laws and regulations apply to accountants.²⁷¹

Professional Associations

The AICPA ***Code of Professional Conduct*** (AICPA Code) is a set of principles, rules and interpretations that guides CPAs. This guidance and rules for all AICPA members, for example those in public practice, performance of their professional responsibilities. The IMA ***Statement of Ethical Professional Practice*** (IMA Code) requires members to act in accordance with the principles of honesty, fairness, objectivity, and responsibility; and uphold the standards of confidentiality, integrity, and credibility.²⁷² The IMA also offers members an anonymous helpline for assistance on the application of the IMA Code to ethical issues.

268 Part of NABA.

269 Institute of Management, "CMA Certification," <https://www.imanet.org/cma-certification?ssopc=1>.

270 American Institute of Certified Public Accountants, "Continuing Professional Education (Cpe) Requirements for Cpas," (2018).

271 Office of the Professions, "General Information & Policies," <http://www.op.nysed.gov/prof/geninfo.htm>. Rules of the Board of Regents Part 29, Unprofessional Conduct, § 29.10 Special provisions for the profession of public accountancy.

272 Institute of Management Accountants, "Ima Statement of Ethical Professional Practice," (2017).

The bylaws of the NYSSCPA require that members adhere to the Rules of the Code of Professional Conduct, as adopted from the AICPA.²⁷³ According to the NYSSCPA “compliance with the Code...depends primarily on members’ understanding and voluntary actions; secondarily, on reinforcement by peers and public opinion; and ultimately, on disciplinary proceedings, when necessary, against members who fail to comply with the Code”.²⁷⁴ The NYSSCPA also provides a ‘technical hotline’ for members.

DISCIPLINE

Government Regulation

Federal laws and regulations that apply to the Securities and Exchange Commission will apply to CPAs carrying out accounting activities in fields that it supervises. The SEC’s Enforcement Division investigates and assists in prosecuting violations using civil actions in federal court. The Boards of Accountancy are notified of findings by the SEC. The Public Company Accounting Oversight Board (PCAOB) created under the Sarbanes-Oxley Act of 2002 to oversee accounting professionals who provide independent audit reports for publicly traded companies.²⁷⁵ The Office of the Professions, under the New York State Education

Department, investigates and prosecutes professional misconduct of accountants licensed to practise in the jurisdiction. The, with its oversight through licencing has ultimate responsibility over disciplinary matters.²⁷⁶ Disciplinary action may take the form of warnings or the application of limits on a license to practise. Administrative outcomes such as these remain confidential but the Office of the Profession has a searchable database of formal decisions. Serious matters are reviewed by the Board of Regents and instigates final action.

The Accountancy Licensee Database (ALD), is run by NASBA and provides the state Boards access to a central source of information licensees, firm and disciplinary information to assist in monitoring and regulating the profession.²⁷⁷

Professional Associations

The Joint Ethics Enforcement Program (JEEP) operates by agreement between the AICPA and state CPA associations (NYSSCPA Professional Ethics Committee participates via agreement). JEEP is a mechanism used to avoid duplicating investigations and enforcements. The AICPA’s Professional Ethics Division investigates potential disciplinary matters that involve members of the AICPA and state CPA NYSSCPA.²⁷⁸

273 New York State Society of Certified Public Accountants, "Ethics," <https://www.nysscpa.org/professional-resources/ethics#introduction>.

274 Ibid.

275 While this report covers the accounting profession generally we note the role the PCAOB has with regard to the registration of public accounting firms and establishing the standards applicable to public company audits. The PCAOB also inspects, investigates, and commences disciplinary proceedings of registered accounting firms; and enforces compliance with the Sarbanes-Oxley Act 2002. The SEC oversees the PCAOB’s operations Securities and Exchange Commission, "Public Company Accounting Oversight Board (PCAOB)," <https://www.sec.gov/fast-answers/answerspcaobhtm.html>.

276 Office of the Professions, "New York’s Professional Misconduct Enforcement System," <http://www.op.nysed.gov/opd/>.

277 National Association of State Boards of Accountancy, "Accountancy Licensee Database," <https://nasba.org/mc/resources/ald/>.

278 NYSSCPA bylaws Article XII–Professional Conduct and Disciplinary Proceedings apply to the ethics committee’s actions. Hearing are undertaken by the Joint Trial Board. AICPA Professional Ethics Division staff will conduct an initial AICPA reviews complaints, investigates, reports to the NYSSCPA PEC which must agree before findings and sanctions imposed.

Failure to comply with the IMA's ethical principles and standards may result in disciplinary action.²⁷⁹

CANADIAN (ONTARIO) ACCOUNTANTS

REGULATORY STRUCTURE

Government Regulation

The Accounting Standards Board of Canada (ASBC) determines Canadian accounting standards. The IFRS are applied in Canada for publically accountable enterprises and contained in the CPA Canada Handbook, along with the accounting standards applied to non-PAEs. The accounting and reporting standards for the public sector are set by the Public Sector Accounting Board (PSAB) and similarly published in the CPA Canada Public Sector Accounting Handbook.

The regulation of the accountancy profession in Canada takes the form of delegated self-regulation by province. The Chartered Professional Accountants of Ontario Act, 2017, the CPA Code of Professional Conduct, CPA Ontario regulations and policies govern the profession in Ontario. CPA Ontario's regulatory

role over the profession is carried out under the Chartered the Chartered Professional Accountants of Ontario Act, with the oversight by the Attorney General. The objectives of the CPA Ontario include promoting and protecting the public interest through governance and regulation of the accountancy profession, individuals and firms as Chartered Accountants. The CPA Ontario has responsibility for establishing, maintaining, developing and enforcing standards of qualification, practice, ethics, knowledge, skill and proficiency. It regulates the practice, competence and professional conduct of individuals and firms acting as Chartered Accountants; advances the knowledge, skill and proficiency members of the broader profession; and promotes its interests those of the accounting profession.²⁸⁰

Professional Associations

Chartered Professional Accountants of Canada (CPA Canada) is the national body representing Canada's accounting profession.²⁸¹

The unification of professional representation occurred quite recently²⁸², when, at the national level, the Canadian Institute of Chartered Accountants (CICA) and the Society of Management Accountants of Canada (CMA Canada) established CPA Canada, and were later joined by the Certified General Accountants of Canada (CGA-Canada).

²⁷⁹ We could not locate the disciplinary process.

²⁸⁰ S 5 Chartered Professional Accountants of Ontario Act 2017.

²⁸¹ It has more than 210,000 members.

²⁸² Formally beginning in 2013 with the establishment of CPA Canada under the Canada Not-for-profit Corporations Act. The Certified General Accountants of Canada joined the CPA in 2014 and by 2016 the majority of accounting profession organisations had unified under the CPA banner. Section 4 Chartered Professional Accountants of Ontario Act, 2017. The CPA Canada unification is in part due to the ACCA's global expansion strategy and its legal challenge to the legislated exclusive use of the name "Chartered Accountant" in Canada CPA Canada, Now Is the Time to Secure Our Future, <https://www.cpacanada.ca/en/the-cpa-profession/uniting-the-canadian-accounting-profession/uniting-the-accounting-profession-a-framework>.

According to CPA Canada, the public interest is better served by common codes of conduct, disciplinary systems and licensing regimes. This places the profession in a better position to influence and contribute to professional developments nationally and internationally. The CPA Canada collaborates with the provincial CPA bodies, develops the standards nationally (certifications program, ethics and practice standards, code of conduct, and discipline processes), with delivery by the provincial CPA bodies.²⁸³ CPA Canada is a member of IFAC and the GAA, and states that it either meets or exceeds all IFAC standards for education, assessment and practical experience, enabling it to offer Mutual Recognition Agreements (MRAs) and Reciprocal Membership Agreements (RMAs).²⁸⁴

As described above the CPA Ontario²⁸⁵ is the governing provincial body within the self-regulating profession with stated aims linking delivery of members' services to public interest protection, regulation, the promotion of high standards of integrity and expertise, and advocating for the interests of the profession. CPA Ontario publishes a Member's Handbook, which includes the CPA Code of Professional Conduct, rules, regulations and policies that govern the profession in Ontario. The CPA Code of Professional Conduct²⁸⁶ sets out the principles guiding the profession. The Code describes the mandatory annual continuing professional

development requirements, complaints handling and discipline provisions.

EDUCATION, TRAINING AND ADMISSION

Regulation

The common education standards established collaboratively by the CPA Canada and provincial bodies fulfil the existing requirements of IFAC and Mutual Recognition Agreements. The common standards for CPA certification require candidates to hold prerequisite education (undergraduate degree and specific prerequisite courses) and complete the CPA Professional Education Program. They must also undertake practical experience and the Common Final Examination. The Common Final Examination, is developed and administered by CPA Canada.²⁸⁷ CPAs must adhere to CPD requirements of the jurisdiction where a CPA designation is held.

²⁸³ Ibid.

²⁸⁴ Ibid. MRAs and RMAs allow pathways for entry to the Canadian profession for members of accounting bodies outside of Canada.

²⁸⁵ 87,000 members and 19,000 students

²⁸⁶ Effective from 26 February 2016 and replacing Rules of Professional Conduct.

²⁸⁷ CPA Canada, "CPA Harmonized Education Policies: Directives for CPA Pep and CPA Preparatory Courses," <https://www.cpacanada.ca/en/become-a-cpa/pathways-to-becoming-a-cpa/national-education-resources/cpa-harmonized-education-policies>.

Professional Associations

An undergraduate degree that meets specified requirements is needed to enter the CPA Program, with CPA preparatory courses available to supplement qualifications. As with previous jurisdictions the CPA designation is achievable only after meeting the educational and experience requirements and exams. Accounting qualifications from outside the Canadian jurisdiction may be accepted in Ontario subject to approval.²⁸⁸ The key components of the CPA certification program in line with the nationally developed standards are the CPA Professional Education Program (CPA PEP), the Common Final Examination (CFE), CPA practical experience requirements and CPA preparatory courses. Members of CPA Ontario need to undertake CPD, which relates to their competency needs and current or future professional needs. Good standing certification depends upon annual submission of a CPD declaration. 120 hours of CPD (including four Verifiable hours of professional ethics) must be undertaken every three years, with half verifiable.²⁸⁹

ETHICS

Government Regulation

Professional Associations

The Canadian CPA profession is a member of the IFAC and is required to ensure that the ethics standards adopted by the professional associations align with the IESBA Code of Ethics for Professional Accountants. The Public Trust Committee (PTC) of CPA Canada oversees the ethics standards and self-regulatory processes of the CPA profession.²⁹⁰ The Rules of Professional Conduct contain the ethics standards, which are based on the principles of professional behaviour, integrity and due care, professional competence, confidentiality, and objectivity. Monitoring and enforcement is carried out under the provincial self-regulation model with CPA Ontario formally setting the ethical requirements in accordance with the Chartered Professional Accountants of Ontario Act, 2017.²⁹¹ In addition, the Member Advisory Services of CPA Ontario offers informal and non-binding confidential assistance to members regarding ethical matters.

288 Chartered Professional Accountants Ontario, "CPA Ontario Annual Report," (2017), <https://media.cpaontario.ca/stewardship-of-the-profession/pdfs/CPA-Ontario-2017-Annual-Report.pdf>, p 11.

289 Chartered Professional Accountants Canada, "Regulation 7-2 Continuing Professional Development," Member's Handbook (19 November 2018), <https://media.cpaontario.ca/stewardship-of-the-profession/pdfs/CPA-Ontario-Members-Handbook.pdf>, effective 1 January 2019.

290 Public Trust Committee Terms of Reference (February 2009).

291 Chartered Professional Accountants Ontario, "Chartered Professional Accountants of Ontario CPA Code of Professional Conduct," (2016), <https://media.cpaontario.ca/stewardship-of-the-profession/pdfs/CPA-Ontario-Code-of-professional-conduct.pdf>.

LAWYERS

DISCIPLINE

Regulation

The Professional Conduct Committee of CPA Ontario reviews and investigated complaints relating to alleged breaches of the Code of Conduct, the Chartered Professional Accountants of Ontario Act, 2017 or other relevant by-laws/regulations.²⁹² Following investigation, the matter may be referred to the Discipline Committee for a full hearing.²⁹³ Disciplinary cases decisions, and reasons are published by CPA Ontario.

LAWYERS²⁹⁴

INTRODUCTION

The diversity of legal services and their modes of delivery are changing, as too are the expectations of end users. Previously self-regulation of the profession by associations was sufficient to regulate conduct but changes to the ‘business’ of legal services are resulting in changes to the regulatory models adopted in the four jurisdictions. An overview of regulatory approaches in the identified jurisdictions shows a combination of external regulators and self-regulation. The voluntary codes and guidelines of international bodies promote globalised

expectations of professional conduct and ethics for the legal profession. In Australia, a combination of self-regulation and co-regulation exists, with potential for meta-regulation. In the United Kingdom, co-regulation operates based on a legislative framework of regulatory oversight by approved regulators, licensing authorities and professional associations. Self-regulation continues to operate in Canada through provincial law societies. State-based regulation and licensing is found in the United States. The following overview of international directions and professional guidance, government statutory regimes, professional associations, service providers and the roles of educational institutions, supports the visual depiction that follows of the way the different components of regulation interact to create a ‘system’ in each of the jurisdictions.

Lawyers Internationally

REGULATORY STRUCTURE²⁹⁵

The United Nations (UN) adopted the UN Basic Principles on the Role of Lawyers (Basic Principles) in 1990 as a tool to ensure recognition of and respect for the proper role of lawyers by governments within national legislative and practice frameworks.²⁹⁶

²⁹² Section 7.3.2, 7.3.3

²⁹³ Where a matter has not been referred to the Discipline Committee, a complainant may appeal this decision to the Reviewer of Complaints. A decision of the Discipline Committee may also be appealed to the Appeal Committee.

²⁹⁴ As identified in the report introduction we are using state/provincial jurisdictions as ‘proxy’ for national representation. We use New South Wales (NSW) for Australia, England for the United Kingdom (UK), New York State for the United States of America (USA), and Ontario for Canada.

²⁹⁵ While it is beyond the scope of this assessment, we note that the World Trade Organisation’s focus on trade liberalisation through deregulation and the removal of barriers to increase competition for services also affects the global legal profession. In the future, this may have greater significance with regard to restrictions on practice and universalisation for some areas such as education, admission to the profession and continuing education.

²⁹⁶ United Nations, “Basic Principles on the Role of Lawyers,” Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 (1990), <https://www.un.org/ruleoflaw/files/UNBasicPrinciplesontheRoleofLawyers.pdf>.

The Basic Principles have the effect of recognising the legal profession within the wider remit of protection of human rights principles particularly as they relate to access to justice, which require, that all persons, have effective access to legal services provided by an independent legal profession.²⁹⁷ The rights and obligations of governments and the profession are articulated in seven areas: access to lawyers and legal services; special safeguards in criminal justice matters; qualifications and training; duties and responsibilities; freedom of expression and association; professional associations of lawyers; and disciplinary proceedings. The Basic Principles emphasise appropriateness of education and training for lawyers, linking this with ethical duties and human rights;²⁹⁸ entitlement to form and join self-governing professional associations;²⁹⁹ codes of conduct, recognising international norms, established either by the profession or in legislation³⁰⁰. The Basic Principles also link disciplinary proceedings to professional codes of conduct and ethical standards.³⁰¹

Professional Associations

The two main international associations of lawyers are the International Bar Association

(IBA) and the International Association of Lawyers (UIA - Union Internationale des Avocats). Both associations are in consultative status with the UN Economic and Social Council.³⁰²

The IBA is an international organisation offering individual and group membership in 170 countries.³⁰³ It supports legal practitioners, the legal profession and the development of international law reform through information exchange, support for the independence of the judiciary and the right of lawyers to practice free from interference, and the promotion of human rights principles.³⁰⁴ The IBA carries out its activities under two divisions, the Legal Practice Division (LPD) and the Public and Professional Interest Division (PPID).

The IBA Professional Ethics Committee works to promote “the high standards of professional conduct and ethics on a global basis”³⁰⁵ through collaboration³⁰⁶, the provision of multiple forums for knowledge sharing on professional duties and standards, and discussions on international developments in the field.

297 The Basic Principles specifically refer to the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Standard Minimum Rules for the Treatment of Prisoners, and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Principle 9, United Nations, “Basic Principles on the Role of Lawyers”.

298 Principle 24, *ibid.*

299 Principle 26, *ibid.*

300 Principle 29, *ibid.*

301 United Nations Economic and Social Council, “List of Non-Governmental Organizations in Consultative Status with the Economic and Social Council as of 1 September 2016: E/2016/INF/5,” (29 December 2016), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/470/64/pdf/N1647064.pdf?OpenElement>.

302 Membership consists of more than 80 000 legal practitioners and more than 190 bar associations and law societies. International Bar Association, “About Us,” https://www.ibanet.org/About_the_IBA/About_the_IBA.aspx.

303 See Aims and Objectives, *ibid.*

304 “Professional Ethics Committee Overview,” https://www.ibanet.org/PPID/Constituent/Professional_Ethics_Committee/Overview.aspx.

305 Including with the IBA Standing Committee on Professional Ethics.

The IBA publishes an ethical code, the *IBA International Principles on Conduct for the Legal Profession* (International Principles),³⁰⁷ containing ten core values common to the legal profession, with commentary. The International Principles are a framework for the development of codes of conduct. The International Principles, are: 1) Independence; 2) Honesty, integrity and fairness; 3) Conflicts of interest; 4) Confidentiality/professional secrecy; 5) Clients' interest; 6) Lawyers' undertaking; 7) Clients' freedom; 8) Property of clients and third parties; 9) Competence; and 10) Fees.³⁰⁸

The UIA represents approximately two million lawyers in more than 110 countries.³⁰⁹

The association offers collective memberships via national associations, and individual memberships. Membership of the UIA is open to all general practitioners and specialist lawyers as well as other legal professionals.³¹⁰ The General Assembly, the Executive Committee, and the Governing Board of the UIA determine the association's rules and compliance with the UIA's principles.³¹¹

Promotion of the rule of law and the independence of the legal profession feature in the mission of the UIA as do the facilitation

of professional development and extension of professional networks.³¹² According to the UIA continuing legal education courses are available to members. Activities in support of furthering the international legal profession include networking, support for professional associations in developing countries, contributions to the international legal discourse through publications and collaborations and connections with international bodies.

The Council of Bars and Law Societies of Europe (CCBE), is an international association representing members of the European legal profession. The bars and law societies of 45 countries from the European Union, European Economic Area, and wider Europe form the core of CCBE membership.³¹³ It acts as a liaison between its members and the regional and international level.³¹⁴ The associations' values are the rule of law, democratic values, fundamental and human rights. Its mission is independence of lawyers, development and future of the legal profession, defence of the defenders, and enhancing cross-border legal services. All members adhere to the statutes of the CCBE and adopt the CCBE Code of Conduct.³¹⁵

307 International Bar Association, *IBA International Principles on Conduct for the Legal Profession*, (International Bar Association, 28 May 2011), https://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx. The IBA Standing Committee on Professional Ethics is responsible for review and maintenance of the Code.

308 The International Principles consider the principles contained in national professional rules; United Nations, "Basic Principles on the Role of Lawyers"; and the United Nations Declaration of Human Rights, UN General Assembly, "Universal Declaration of Human Rights," 217 A (III) (10 December 1948), <http://www.un.org/en/universal-declaration-human-rights/index.html>.

309 International Association of Lawyers, "About Us," <https://www.uianet.org/en/about-us>. The American Bar Association, Law Council of Australia, Law Society of NSW, Federation of Law Societies of Canada, and the Bar Council and Law Society of England and Wales are members of the UIA, "Members Directory," https://www.uianet.org/en/directory?page=2&field_country=88284.

310 "About Us: Structure," https://www.uianet.org/en/about-us#tab_content_76033.

311 UIA rules and statutes are available to members only.

312 UIA rules and statutes are available to members only.

313 International Association of Lawyers, "About Us: Activities," https://www.uianet.org/en/about-us#tab_content_76032.

314 Council of Bars and Law Societies of Europe, *Statutes of the Council of Bars and Law Societies of Europe*, (CE Plenary Session, Brussels 29-30 November 2013), https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/STATUTS/EN_statutes.pdf. Formed from different categories of membership full, associate, and observer.

315 "Who We Are," <https://www.ccbe.eu/about/who-we-are/>.

316 Statutes of the Council of Bars and Law Societies of Europe.

Associations operating in the Commonwealth to support the work of the legal profession include the Commonwealth Law Association (CLA) and the Commonwealth Legal Education Association (CLEA). Both associations are formally associated with the Commonwealth.³¹⁶

The CLA is a membership association with its main objective being the promotion of the rule of law in the Commonwealth through an independent legal profession. The association is “committed to the preservation of the highest standards of ethics and integrity”, promotes uniformity in the standards of professional ethics and improved standards of education.³¹⁷

As a professional association, the CLA encourages the exchange of ideas amongst members of the Commonwealth legal profession through regular events and workshops, the distribution of its publications to members and particularly via its biennial conference.³¹⁸

Individual, corporate and institutional membership categories are available for qualified lawyers, firms and law societies.³¹⁹

The CLEA³²⁰ promotes high standards of legal education throughout the Commonwealth

with the aim of ensuring that legal education is socially relevant and professionally useful. Activities in support of the association’s legal education goals include curriculum development³²¹, support of law schools and continuing education for the profession, hosting of conferences and lectures, and publications for members.³²² The CLEA collaborates with the CLA in a number of areas relevant to this mapping exercise, most significantly by coordinating their biennial conferences and jointly hosting the Commonwealth Moot Competition.³²³

AUSTRALIAN (NSW) LAWYERS

REGULATORY STRUCTURE

Government Regulation

The Legal Profession Uniform Framework operates in New South Wales (NSW) following enactment in 2014 of the *Legal Profession Uniform Law* and the local application Act.³²⁴

316 The Commonwealth, "Directory of Accredited Organisations," <http://thecommonwealth.org/organisation-directory>. The CLA and CLEA are accredited with the Commonwealth. Accreditation requires organisational commitment to the Values and Principles of the Commonwealth, as detailed in the Commonwealth Charter and favourable assessment by the Accreditation Committee.

317 Commonwealth Lawyers Association, "About Us," <https://www.commonwealthlawyers.com/>. Governance of the CLA is via the Council, Executive Committee and Secretariat (lead by the Governance of the CLA is via the Council, Executive Committee and Secretariat (lead by the Secretary General).

318 The CLA publishes an online journal, *The Commonwealth Lawyer* for members, *The Commonwealth Lawyer* (London: The Commonwealth Lawyers Association, 1989).

319 "Joining and Member Benefits," <https://commonwealthlawyers.com/page-18071>. The Law Council of Australia is a member of the CLA.

320 Founded 1971.

321 Including teaching resources for use across the Commonwealth such as the Commonwealth Model International Human Rights Curriculum and the Commonwealth Model Transnational Crime Curriculum.

322 Commonwealth Legal Education Association, "Journal of Commonwealth Law and Legal Education," (2018), <http://www.clea-web.com/publications/the-journal/>.

323 "About," <http://www.clea-web.com/about/>. Of note also is the collaboration between the CLA, CLEA, Commonwealth Magistrates' and Judges' Association (CMJA) and Commonwealth Parliamentary Association (CPA) on the Commonwealth Principles on the Accountability of and the Relationship between the Three Branches of Government (Commonwealth (Latimer House) Principles).

324 The Legal Profession Uniform Laws came into effect in NSW and Victoria from 1 July 2015. Legal Profession Uniform Law Application Act 2014 (NSW) and the Legal Profession Uniform Act 2014 (NSW). Jurisdiction specific provisions are dealt with in the local application Acts of NSW and Victoria.

The Uniform Law aims to promote a national legal profession through consistent laws as they apply to members of the profession and a single system to govern legal practice.³²⁵ The Uniform Law applies to admission, legal practice, professional conduct, professional discipline and dispute resolution. The law establishes an inter-jurisdictional framework of regulatory bodies to oversee the legal profession, comprising of the Standing Committee of NSW and Victorian Attorneys General (Standing Committee), the Legal Service Council (LSC), the Commissioner for Uniform Legal Services Regulation, and the Admissions Committee. These bodies carry out their roles in conjunction with the already existing 'local' state-based regulatory authorities. The supporting Uniform Rules detail the practical components to carry out the intent of the law, for example, the rules of procedure for admission to practice law.

Within this legislative framework the Standing Committee, comprising of the NSW and Victoria Attorneys General, oversees the activities of the LSC, Commissioner for Uniform Legal Services and the state based regulatory authorities, and holds budgetary control of the LSC.³²⁶ The Standing Committee may make Legal Profession Uniform Regulations³²⁷ and approves the Uniform Rules.³²⁸

The LSC monitors the implementation of the Uniform Law, develops the Uniform Rules, and oversees their implementation in the participating jurisdictions. In developing Uniform Rules, the LSC consults with the Commissioner, the LSC's advisory committees and local regulatory authorities as it considers appropriate, and holds a public consultation period.³²⁹ The LSC consults with the Law Council of Australia, the Australian Bar Association and the Admissions committee, as appropriate, on amendments to the Rules, and reports to the Standing Committee on the actions undertaken.³³⁰ The role of the LSC is to promote consistency across the jurisdictions; ensure that the Legal Profession Uniform Framework operates efficiently and that it takes account of and protects client interests; promote the maintenance of professional standards. The LSC can issue directions and provide guidance to the regulatory authorities in the participating jurisdictions but does not regulate individual lawyers.³³¹ Local regulatory authorities³³² regulate the legal profession in areas of admission; registration; trust accounting and auditing; and, complaints, dispute resolution and professional discipline.³³³

325 Section 3 Legal Profession Uniform Law 2014 (NSW). Noting that currently only New South Wales and Victoria have adopted the Uniform Laws, based on an intergovernmental agreement The State of New South Wales and The State of Victoria, Bilateral Agreement on the Uniform Legal Profession Framework, (5 December 2013), http://www.legalservicescouncil.org.au/Documents/Intergovernmental_Agreement.pdf.

326 Part 8.1 Legal Profession Uniform Law 2014 (NSW).

327 Section 417 Legal Profession Uniform Law 2014 (NSW).

328 See Section 427 Legal Profession Uniform Law 2014 (NSW), which permits the development of Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules by the Law Council of Australia for solicitors, Australia Bar Association for barristers, Law Council of Australia and Australian Bar Association for Australia-registered foreign lawyers.

329 Section 425 Legal Profession Uniform Law 2014 (NSW).

330 Section 430 Legal Profession Uniform Law 2014 (NSW). For Admission Rules, the LSC consults the Admissions Committee. For the Legal Practice Rules, Legal Profession Conduct Rules or Continuing Professional Development Rules, the LSC consults the Law Council of Australia and the Australian Bar Association.

331 Part 8.2 Legal Profession Uniform Law 2014 (NSW).

332 Described in the sections below. We also note that courts and tribunal also play a role as arbiters on referral from regulatory authorities.

333 As described in Chapter 5 Legal Profession Uniform Law 2014 (NSW).

The Commissioner for Uniform Legal Service Regulation promotes compliance with the Uniform Law and Rules; ensures the implementation of dispute resolution and professional discipline principles³³⁴ and their supporting Uniform Rules is consistent and effective; raises awareness of the Uniform Law framework and its objectives. The Commissioner can issue guidelines and directions to local regulatory authorities about dispute resolution and professional discipline (Chapter 5) functions.³³⁵

The Admissions Committee is established by the LSC under the Uniform Law and comprises of seven members from the participating jurisdictions.³³⁶ The Committee (described further below) develops rules for admission to the profession, advises the LSC on admissions policy and the LSC's guidelines and directions as they relate to admissions.³³⁷

The Professional Standards Councils (PSCs) provide a further layer of regulatory oversight. The PSCs are independent statutory bodies established within the Australian state and territory jurisdictions.³³⁸ They protect the end users of professional services by improving the professional standards in a variety of

professions, including the legal profession. This is achieved via the establishment of schemes to limit the liability of members of professional associations, consumer protection, and improved occupation standards.³³⁹

The PSCs are responsible for assessing and approving applications for Professional Standards Schemes and for monitoring and enforcing of the schemes. The associations need to demonstrate a high commitment to professional standards and consumer protection, implement risk management strategies, and established professional indemnity insurance standards for their members.³⁴⁰ The PSCs collaborate with professional associations to develop self-regulation initiatives with the purpose of improved professionalism.³⁴¹

The Office of the Legal Services Commissioner New South Wales (OLSC) is an independent statutory authority forming part of the co-regulatory system described with regard to investigating complaints about professional conduct and resolving consumer matters (described below). The stated vision of the body is to lead the "development of an ethical legal services market which is fair, accessible and responsive".³⁴²

334 Chapter 5 Legal Profession Uniform Law 2014 (NSW).

335 Part 8.3 Legal Profession Uniform Law 2014 (NSW).

336 Part 8.4 Legal Profession Uniform Law 2014 (NSW).

337 Section 402 Legal Profession Uniform Law 2014 (NSW).

338 Links to Professional Standards Legislation in Australian States and Territories <https://www.psc.gov.au/legislation>

339 <https://www.legislation.nsw.gov.au/#/view/act/1994/81/full>

340 Associations of the legal profession that have approved schemes include Bar Association of Queensland, Law Institute of Victoria, Law Society of NSW, Law Society of South Australia, Law Society of Western Australia, New South Wales Bar Association, Queensland Law Society, South Australian Bar Association, Victorian Bar Association, Western Australian Bar Association. Noting also that professional indemnity insurance is compulsory. The Law Society of New South Wales Professional Standards Scheme has been approved by the Professional Standards Council and will commence on 22 November 2018.

341 Professional Standards Act 1994 <https://www.legislation.nsw.gov.au/#/view/act/1994/81/part6>

342 Office of the Legal Services Commissioner, "Mission Statement," http://www.olsc.nsw.gov.au/Pages/lsc_aboutus/olsc_mission.aspx.

Its mission is focussed on improving consumer satisfaction through a combination of effective complaint handling, adherence by the profession to high professional and ethical standards, improved consumer focus within the profession to reduce causes for complaint, and the promotion of realistic community expectations of the legal system.³⁴³ The OLSC reports to Parliament through the New South Wales Attorney General, and Minister for Justice.

Professional Associations

The Law Council of Australia (LCA) represents 16 Australian state and territory, bar associations, law societies, and law firms.³⁴⁴ The LCA contributes to dialogues on issues of international and national importance, federal law and the operation of federal courts and tribunals.³⁴⁵ It provides advice on improving the justice system and law to governments, courts and federal agencies, represents the legal profession overseas, and has effective relationships with overseas legal professional bodies.³⁴⁶ Has specialist Sections and committees. The LCA aims to lead the Australian legal profession on national and international legal issues.³⁴⁷ The Council's focus is on the promotion of the Australian legal profession (including "consistent and co-ordinated

regulation of the Australian legal profession"), the rule of law, the administration of justice and appropriate law reform.³⁴⁸ Under the Uniform Law the LCA develops the Legal Practice Rules, Legal Profession Conduct Rules and Continuing Professional Development Rules (Uniform Rules) as they apply to solicitors. Consultation occurs with the LSC, the Commissioner, LSC advisory committees and local regulatory authorities as appropriate. With approval from the LSC there is a public consultation period, and once a revised draft is approved by the LSC the proposed Rules are submitted to the Standing Committee.³⁴⁹

Other relevant activities include the development by the LCA of continuing legal education programs and conferences at the national level, and "consultation on and advancement of the professional and ethical standards of Practitioners and legal institutions".³⁵⁰ The LCA also develops the Australian Solicitors' Conduct Rules (described below) which are the professional conduct rules for solicitors practising in Australia.

The Australian Bar Association (ABA)³⁵¹ focuses on providing services to members, improving the profession and promoting the rule of law and the administration of justice. The constituent bodies of the ABA the Bar Associations of the states and territories.³⁵²

343 Ibid.

344 Established in 1933, the Law Council represents the interests of approximately 65,000 lawyers in Australia, including the Law Society of New South Wales and the New South Wales Bar Association. See Law Council of Australia, "About Us," <https://www.lawcouncil.asn.au/about-us>; Constitution of Law Council of Australia Limited, (2003), <https://www.lawcouncil.asn.au/resources/corporate-documents/constitution-of-law-council-of-australia-limited>.

345 See for example, "International Division Strategy Implementation Plan," (2017), <https://www.lawcouncil.asn.au/files/pdf/corporate-document/International-Division-%20Strategy-2017-2020.pdf>.

346 "About Us".

347 Strategic Plan 2015-2020, (2015), <https://www.lawcouncil.asn.au/resources/corporate-documents/strategic-plan-2015-2020>; Constitution of Law Council of Australia Limited. Section 2.1(b).

348 Strategic Plan 2015-2020. Constitution of Law Council of Australia Limited.

349 Section 427 Legal Profession Uniform Law 2014 (NSW).

350 Law Council of Australia, Constitution of Law Council of Australia Limited. Section 2.1(e)(i)-(ii).

351 Established in 1963 and representing approximately 6000 Australian barristers.

352 Australian Bar Association, Constitution (31 January 2017), http://austbar.asn.au/uploads/pdfs/ABA_Constitution_31_Jan_2017.pdf. section 7, the Bar Association of Queensland, the New South Wales Bar Association, the Victorian Bar, the South Australian Bar Association, the Western Australian Bar Association, the Australian Capital Territory Bar Association, the Northern Territory Bar Association, and the Tasmanian Independent Bar.

Individual membership of the ABA is available to holders of Australian practising certificates who are also members of a State or Territory Bar Association.³⁵³ The association's Council, to which each of the constituent members appoints one representative, carries out governance.³⁵⁴ The priority areas for the ABA focus on advocacy and advisory services, promotion of business opportunities, provision of programs for professional growth, improving the profession through the promotion of high quality legal education, and ethical standards. Under the Uniform Law the ABA develops the Uniform Rules as they apply to barristers. In line with the legislative requirements placed on the LCA, the ABA is required to consult with the LSC, the Commissioner, LSC advisory committees and local regulatory authorities as appropriate. The public consultation period follows, and once a revised draft is approved by the LSC the proposed Rules are submitted to the Standing Committee.³⁵⁵

The Law Society of New South Wales (Law Society NSW) combines its professional representative role with a statutory regulatory role. The regulation of solicitors in NSW is shared with the Office of the Legal Services Commissioner. Governance of the Law Society

NSW is by the Law Society Council, which consists of 21 elected Councillors from the profession and wider community.³⁵⁶ The Law Society NSW represents the profession and serves members, advocates for legislative reform, ensures an ethical, competent and independent legal profession, and promotes access to justice for the community. In fulfilling its regulatory role, the Law Society NSW sets and enforces professional standards, licenses solicitors to practise, investigates complaints and administer discipline. New South Wales Bar Association (Bar NSW) is a voluntary association, representing barristers of NSW.³⁵⁷ Its governing body is the Bar Council, elected by the membership of Bar NSW.³⁵⁸ Like the Law Society NSW, the Bar Council carries out a number of functions under the Uniform Law as a designated local regulatory authority, and shares a regulatory role with the Office of the Legal Services Commissioner.³⁵⁹ Generally, the Bar NSW aims to promote the administration of justice and high standards of professional and honourable practice; it represents and promotes the interests of its members; promotes continuing education; and fulfils its statutory role with regard to professional discipline of members.³⁶⁰

353 Ibid. section 9.

354 Ibid. section 29.1.

355 Section 427 Legal Profession Uniform Law 2014 (NSW).

356 Memorandum and Articles of Association, the Legal Profession Uniform Law (NSW)(2014) and the Corporations Act 2001.

357 Incorporated in 1936, see New South Wales Bar Association, "Constitution of the New South Wales Bar Association," (2 November 2017), https://www.nswbar.asn.au/docs/webdocs/Constitution_as_at_2_Nov_2017.pdf, Section 4 on Membership describing classes of membership that differentiate between barristers who hold a current practising certificate in NSW and those from other jurisdictions. The Council must also be satisfied that the person is a fit and proper person to practise as a barrister before membership is conferred, Section 5.1.4 *ibid.*.

358 Sections 10.2 and 11 *ibid.*

359 See Section 11 Legal Profession Uniform Law Application Act 2014 No 16 for each of the designated local regulatory authorities and their corresponding provisions in the Legal Profession Uniform Law (NSW). Noting also that the Chapter 5 Dispute Resolution and Professional Discipline functions may be delegated by the local regulatory authority to a professional association – highlighting the co-regulatory relationships between the Legal Services Commissioner New South Wales and the Law Society and Bar Association.

360 New South Wales Bar Association, "New South Wales Bar Association Strategic Plan," (2017-20), <http://inbrief.nswbar.asn.au/posts/4df95d7a2fb-43495d59665ad061e3db4/attachment/strategic.pdf>.

Specialist committees support the functions of the Bar NSW through the provision of expert advice and formulation of law reform and public policy submissions.³⁶¹ The Bar NSW publishes Bar News, the journal of the association, and makes it publically available via its website.³⁶²

EDUCATION, TRAINING AND ADMISSION

Government Regulation

The Legal Profession Uniform Framework regulates the educational requirements and admission to the legal profession in NSW.³⁶³ The Admissions Committee, Legal Services Council and Standing Committee have a legislated role in developing, making and approving the Admission Rules. The Admissions Committee also advises the LSC about admissions-related matters.³⁶⁴ The Tertiary Education Quality and Standards Agency³⁶⁵ (TEQSA) is the national quality assurance and regulatory agency for higher education. It ensures compliance with the national policy, the Australian Qualifications Framework (AQF)³⁶⁶, which requires distinct

learning outcomes for law programs to ensure a minimum discipline knowledge.³⁶⁷

In general, entry into the legal profession requires completion of an approved academic course and a practical legal training component.³⁶⁸ Lawyers need to be admitted as an Australian lawyer by the Supreme Court of New South Wales³⁶⁹ and a practising certificate issued by the Law Society of NSW or NSW Bar Association.³⁷⁰ Practising certificates are issued once requirements, including professional indemnity insurance, completed mandatory continuing legal education, and the fit and proper person test, are met.³⁷¹

A lawyer seeking to practice as a solicitor in New South Wales is required to undertake supervised legal practice restricted practising certificate.³⁷² A lawyer seeking to practice as a barrister in New South Wales must pass the New South Wales Bar Examination³⁷³, be admitted as a lawyer in an Australian jurisdiction, undertake the bar practice course and one year of readership under the supervision of a tutor.³⁷⁴

361 "Appointments," <https://www.nswbar.asn.au/the-bar-association/appointments>. for the list of Committees of the NSW Bar Association.

362 "Resources," <https://www.nswbar.asn.au/the-bar-association/resources-and-publications>.

363 Part 2.2 of the Legal Profession Uniform Law provides for admission to the Australian legal profession. The Legal Profession Uniform Admission Rules 2015 specify the academic qualifications (Rule 5) and required practical legal training (Rule 6) as well as the procedural requirements for admission. The Rules also provide for the accrediting and reaccrediting of law courses (Rules 7 & 8) and providers of practical legal training.

364 The Admissions Committee is required under section 426 the Uniform Law to develop Admission Rules in consultation with others (including the Chief Justices of the participating jurisdictions, the Commissioner, LSC, local regulatory authorities) and, with the approval of the Legal Services Council, to release a draft for public consultation.

365 Tertiary Education Quality and Standards Agency Act 2011.

366 "Australian Qualifications Framework," <https://www.aqf.edu.au/>.

367 For Bachelor of Laws threshold learning outcomes see, Sally Kift, Mark Israel, and Rachael Field, Bachelor of Laws Learning and Teaching Academic Standards Statement, (Learning and Teaching Academic Standards Project, December 2010), <https://cald.asn.au/wp-content/uploads/2017/11/LLB-TLOsKiftetalLTASStandardsStatement2010-TLOs-LLB2.pdf>.

368 In addition to Australian university law degrees, entry to the profession in NSW is also permitted via successful completion of the LPAB's Diploma in Law, offered through the University of Sydney's Law Extension Committee The Legal Profession Admission Board and The University of Sydney, A Pathway to Legal Practice and Continuing Professional Development, <http://www.lpab.justice.nsw.gov.au/Documents/Pathway%20Brochure.pdf>.

369 Section 16 Legal Profession Uniform Law.

370 Categories of practising certificate which may issued by the designated local regulatory authority are specified in Section 47(1) of the Legal Profession Uniform Law as Principal of a law practice, Employee of a law practice, Corporate legal practitioner, Government legal practitioner, as or in the manner of a barrister only and Volunteer.

371 A lawyer cannot hold a practising certificate in two Australia jurisdiction concurrently.

372 For an 18 month period in New South Wales.

373 A Lawyer must attain a pass mark of 75%, subjects examined include legal ethics, evidence and procedure.

374 New South Wales Bar Association, "Guide to Becoming a Barrister in New South Wales," https://www.nswbar.asn.au/docs/webdocs/BAR_Becom-Barrister_A5_10Aug17_e.pdf.

The reading period is 12 months supervised practice, including ten days of civil and ten days of criminal law reading. An unconditional practicing certificate is attainable on verification by the supervisory counsel that the reading requirements have been met.³⁷⁵

The Legal Profession Admission Board NSW (LPAB) is established under the Legal Profession Uniform Law Application Act 2014.³⁷⁶

The LPAB fulfils a number of regulatory roles. It determines the eligibility and suitability of applicants for admission to the profession in NSW and issues compliance certificates. Academic law courses and practical legal training courses in NSW are accredited by the LPAB.³⁷⁷ It offers the Diploma in Law course³⁷⁸, as mentioned above, and maintains the Roll of Lawyers, Committees and Sub-Committees.

The LPAB also assesses qualifications obtained overseas.³⁷⁹ Conditional admission for lawyers with overseas qualifications is permitted for a specific matter or to practise as a corporate counsel.³⁸⁰ Foreign lawyers apply to the LPAB for

approval to apply for admission to the Supreme Court of New South Wales and to obtain a practicing certificate with the Law Society. The practice of foreign law without registration is permitted for foreign lawyers so long as the practise is less than 90 days in a one year-period.³⁸¹

The Law Admissions Consultative Committee³⁸² (LACC) develops and makes recommendations on issues regarding admission to the legal profession, encourages consensus between the bodies of its members and is generally responsible to the Council of Chief Justices.³⁸³

The focus of recommendations includes the required qualifications, experience, and the suitability of applicants for admission³⁸⁴; the accreditation, monitoring and review of the institutions and educational courses for admission; different classes of admission and their associated conditions.³⁸⁵ For example, the LACC publishes Law Admissions Consultative Committee Accreditation Standards for Australian Law Courses³⁸⁶ as a tool for law schools that complements the standards issued by regulators under the Legal Profession Uniform Framework.

375 Ibid.

376 Division 1 of Part 3 Legal Profession Uniform Law Application Act 2014. The activities of the LPAB are also governed by the Legal Profession Uniform Admission Rules 2015 and the NSW Admission Board Rules 2015.

377 The LPAB's Legal Qualifications Committee overseas the qualification requirements for admission as a lawyer, and advises the LPAB about accreditation of courses.

378 The LPAB's Examinations Committee overseas the conduct of the Diploma course examinations, including content and the candidatures of students of the Diploma course.

379 Admission may require completion of specified subjects at an Australian law school.

380 Section 20 of the Legal Profession Uniform Law (NSW).

381 Section 60(1)(a), Legal Profession Uniform Law (NSW). Compliance certificates for foreign lawyer may also be issued with conditions including a limitation on the period of admission, a requirement for academic or practical training, supervision of practice and limitations on the area of law they may practice in, Section 20(1), Legal Profession Uniform Law (NSW).

382 Membership of the LACC consists of representatives of the Law Admitting Authority in each Australian jurisdiction, the Committee of Australian Law Deans, the Australasian Professional Legal Education Council and the Law Council of Australia, Section 1 Law Admissions Consultative Committee, Law Admissions Consultative Committee Charter (2010), https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/212391469_2_LACC%20Charter%202010.pdf.

383 Sections 2.4 and 2.7 *ibid*.

384 The Assuring Professional Competence Committee is impact of disruptive innovation on the provision of legal services and aims to develop a Competence Statement for Australian Legal Practitioners, see Assuring Professional Competence Committee, What We Need to Do, (2017), <https://www.lawcouncil.asn.au/resources/law-admissions-consultative-committee/assuring-professional-competence-committee>.

385 Section 2.3 Law Admissions Consultative Committee, Law Admissions Consultative Committee Charter

386 Accreditation Standards for Australian Law Courses, (July 2018), https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/238832380_18_LACC%20-%20Standards%20for%20Accrediting%20Law%20Courses.pdf.

The Council of Australian Law Deans (CALD) membership consists of the Deans of all Australian law schools.³⁸⁷ The central objectives are consultation on matters of mutual importance and the adoption of policies as required³⁸⁸; the furtherance of legal education and legal research; the promotion of cooperation between institutions of the profession; and representation of the interests of law schools to governments, higher education bodies, the legal profession and the wider community.

It is a statutory condition of an Australian practising certificate that the applicable requirements of the Continuing Professional Development Rules are complied with.³⁸⁹ The continuing professional development requirements for lawyers in NSW are set out in the Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015 and the Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015. Solicitors and barristers in NSW must earn 10 CPD points each year. Solicitors must undertake a minimum of 1 point from compulsory areas of ethics and professional responsibility; practice management and business skills; professional skills; and substantive law.³⁹⁰

Barristers must, in each CPD year undertake CPD activities in ethics and professional responsibility; practice management and business skills; substantive law, practice and procedure, and evidence; barristers' skills.³⁹¹ It is the responsibility of individual lawyers to maintain records of their CPD and on application to renew a practising certificate, which is required annually, provide a declaration of compliance with the requirements of the CPD scheme to the respective designated local regulatory authority.³⁹²

Professional Associations

The NSW Law Society offers solicitors online access to courses that meet CPD requirements, including all mandatory subjects and other specific practice areas.³⁹³ It also recognises experts within fields of practice using examinations to award accreditation.³⁹⁴

Similarly, Bar NSW provides online access for members to seminar and host events that meet the CPD requirements for Barristers.³⁹⁵

The Bar NSW recognises the skill of advocates through Senior Counsel appointments. The ABA's Australian Bar Advocacy Training Council advises and supports training providers within its constituent bodies on good practice advocacy training for the Bar.³⁹⁶

387 Section 2 Council of Australian Law Deans, Constitution, (2017), <https://cald.asn.au/wp-content/uploads/2017/11/CALD-Constitution-Amended-March-2017.pdf>.

387 Section 2 Council of Australian Law Deans, Constitution, (2017), <https://cald.asn.au/wp-content/uploads/2017/11/CALD-Constitution-Amended-March-2017.pdf>.

388 For example, The Cald Standards for Australian Law Schools, (As Adopted 17 November 2009 and Amended to March 2013), <https://cald.asn.au/wp-content/uploads/2017/11/CALD-Standards-As-adopted-17-November-2009-and-Amended-to-March-2013.pdf>. These Standards are administered by the Australian Law Schools Standards Committee, which certifies law schools as compliant with the Standards; and reviews and proposes amendments to the Standards.

389 Section 52 Legal Profession Uniform Law.

390 Rule 6 Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015.

391 Rule 9 Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015.

392 Sections 12 and 13 Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015. 13 and 14 Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015. The Law Society and Bar Association, as designated local regulatory authorities, carry out audits to monitor compliance with the CPD rules.

393 Law Society of New South Wales, "Lawinform," <https://www.lawinform.com.au/mod/page/view.php?id=2615>.

394 The title 'Accredited Specialist' may be used by solicitors who pass the examinations.

395 New South Wales Bar Association, "CPD Events," <https://www.nswbar.asn.au/for-members/cpd-events>.

396 Australian Bar Association, Constitution section 41.

Electronic databases of current practising solicitors and barristers are available on the websites of the Law Society of New South Wales and the New South Wales Bar Association.

A number of other associations represent members of the profession and play a role in shaping the regulatory landscape as it relates to the educational requirements for those entering the profession or continuing professional development. Relevant associations include the Australasian Professional Legal Education Council (APLEC) represents providers of Practical Legal Training (PLT) programs in Australia through the development of competency standards for entry level lawyers to guide the expected content and standards of PLT programs.³⁹⁷ The Australian Academy of Law (AAL) comprises of members from all sectors of the legal profession, including academia and the judiciary, who exhibit special distinction in law. The AAL offers a forum for cooperation and collaboration, with objectives that include the promotion of the highest standards of ethical conduct and professional responsibility; and legal scholarship, legal research, legal education, legal practice, and the administration of justice.³⁹⁸ The Australasian Law Teachers Association (ALTA) which promotes excellence in legal academic teaching and

research and represents the interests of law teachers, academics and scholars in Australia, New Zealand and the South Pacific.³⁹⁹ The Continuing Legal Education Association of Australasia (CLEAA) engages with individuals, organisations and bodies involved in the provision of continuing legal education and legal professional development.⁴⁰⁰ The Australian Law Students Association advocates for the interests and concerns of Australian law students to the higher education sector, government, the legal profession and the wider community.⁴⁰¹

ETHICS

Government Regulation

The *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (NSW)* and the *Legal Profession Uniform Conduct (Barristers) Rules 2015 (NSW)* govern the professional obligations and ethical principles for solicitors and barristers in NSW. The Australian Solicitors' Conduct Rules as developed by the LCA form the basis for the NSW Solicitors' Rules⁴⁰² and the Australian Bar Association's Barristers' Conduct Rules are the basis for the NSW Barristers' Rules.⁴⁰³

397 and New Zealand.

398 Section 4 Australian Academy of Law, Constitution, (2006), [http://www.academyoflaw.org.au/resources/Documents/\(FINAL\)%20AAL%20Constitution_updated_20%20October%202016.pdf](http://www.academyoflaw.org.au/resources/Documents/(FINAL)%20AAL%20Constitution_updated_20%20October%202016.pdf).

399 "Australasian Law Teachers Association," <http://www.alta.edu.au/>.

400 "Continuing Legal Education Association of Australasia," <https://cleaa.asn.au/about-cleaa/>.

401 Australian Law Students' Association, "What Is ALSA?," <https://www.alsa.asn.au/about-alsa/>.

402 Also adopted by Victoria, South Australia and Queensland. At the time of writing, a review is being conducted of the Australian Solicitors' Conduct Rules by the LCA, through its Professional Ethics Committee.

403 Also adopted by Victoria, South Australia, Queensland and Western Australia.

The purpose of Solicitors' Rules is to assist "solicitors to act ethically and in accordance with the principles of professional conduct established by the common law and these Rules." "A breach of these Rules is capable of constituting unsatisfactory professional conduct or professional misconduct, and may give rise to disciplinary action by the relevant regulatory authority, but cannot be enforced by a third party."⁴⁰⁴ Commentary accompanying the Australian Solicitors' Conduct Rules provides additional information and guidance to the application of the Rules.

Professional Associations

The Bar NSW offers ethical advice to its members via its Ethical Guidance Scheme, which operates through the association's Professional Conduct Department.⁴⁰⁵ The Law Society NSW⁴⁰⁶ provides and ethics assistance for all solicitors through its Ethics Unit. The Ethics Unit also reports to the Society's Ethics Committee on relevant ethical and legal developments, provides ethics education including for CPD courses.⁴⁰⁷ Law Society's Ethics Committee guides the Law Society on professional ethical matters and policy. In addition to this policy development role, the Committee considers referred matters including conflict of interest and solicitors' communications and relationships with clients, colleagues and third parties.

DISCIPLINE

Government Regulation

Under the Legal Profession Uniform Law, and as part of the co-regulatory system with the Law Society NSW and Bar NSW, the Office of the Legal Services Commissioner (OLSC) assesses complaints about the conduct of solicitors and barristers as either consumer or disciplinary matters. The OLSC oversees the investigation of complaints, can resolve consumer matters and may investigate, mediate or dismiss complaints. Disciplinary proceedings may also be commenced in the NSW Civil and Administrative Tribunal (NCAT) - Occupational Division. The Office of the Legal Services Commissioner may also refer complaints to the Law Society of NSW or Bar NSW. The Law Society's Professional Standards Department investigates complaints referred by the OLSC to it. The Law Society's Professional Conduct Committee considers the findings of an investigation. Findings of professional misconduct must be referred to the Administrative Decisions Tribunal (ADT).⁴⁰⁸

404 Law Council of Australia, Australian Solicitors Conduct Rules, (2015), https://www.lawcouncil.asn.au/files/web-pdf/Aus_Solicitors_Conduct_Rules.pdf.

405 New South Wales Bar Association, "Ethical Guidance," <https://www.nswbar.asn.au/for-members/ethical-guidance>.

406 The Law Society NSW publishes on its website its Statement of Ethics Law Society of New South Wales, Statement of Ethics, (28 May 2009), <https://www.lawsociety.com.au/practising-law-in-NSW/ethics-and-compliance/ethics/about>.

407 "Ethics Committee Guidance," <https://www.lawsociety.com.au/practising-law-in-NSW/ethics-and-compliance/ethics/committee-guidance>; "Ethics Education," <https://www.lawsociety.com.au/practising-law-in-NSW/ethics-and-compliance/ethics/education>.

408 For compensation claims, a complainant may appeal a determination of the ADT to the Supreme Court of NSW.

Findings of unsatisfactory professional conduct, may result in a caution, reprimand, compensation order, a condition placed on the solicitor's practising certificate, or the matter may be referred to the ADT for a determination. The Committee's decisions are reviewable, on application of the complainant, by the Commissioner who may for example, confirm the decision, require reinvestigation, caution or reprimand, or refer the complaint to the ADT. Decisions regarding disciplinary matters are publicly available via the Law Society's website.⁴⁰⁹ The Bar NSW's Professional Conduct Department investigates complaints referred to the Bar Council by the Legal Services Commissioner and reports on the investigations to the Bar Council.

Professional Associations

The Australian Bar Association, through Council resolution, may discipline individual members for conduct prejudicial to the ABA. Discipline may involve reprimand, suspension or expulsion from the association.⁴¹⁰ The Bar Council may terminate membership if a members no longer meets the requirements for admission; does not comply the Constitution or Bar Council rules; or "engages in conduct which in the opinion of the Bar Council is unbecoming of the Member or prejudicial to the interests or reputation of the Bar Association."⁴¹¹

Regulatory Compliance Support Unit (RCSU) of the Law Society NSW offers solicitors confidential assistance through to prevent compliance issues from escalating into complaints and disciplinary actions. The Professional Conduct Advisory Panel (PCAP) provides confidential and independent support to solicitors facing disciplinary proceedings. Via its website, the Bar NSW publishes a list of disciplinary cases and a list of barristers with practising certificates suspended or cancelled.⁴¹²

UK/ENGLAND LAWYERS

REGULATORY STRUCTURE

Government Regulation

The Law Services Act 2007 (LSA) provides for a co-regulatory framework for the conduct of the legal profession, with eight overarching regulatory objectives that centre on the public interest, support for the rule of law, access to justice, protection of consumer interests, the promotion of competition in the legal service sector, encouraging an independent legal profession increasing public understanding of citizen rights and duties, and the promotion and maintenance of professional principles.⁴¹³

409 Law Society of New South Wales, "Disciplinary Decisions," <https://www.lawsociety.com.au/practising-law-in-NSW/discipline-and-disqualification/disciplinary-decisions>.

410 Australian Bar Association, Constitution section 15.1.

411 Section 7.2.1 New South Wales Bar Association, "Constitution of the New South Wales Bar Association".

412 "Professional Conduct: Latest Disciplinary Cases," <https://www.nswbar.asn.au/pcd-latest-disciplinary-cases>. "PCD Suspensions/Cancellations of PC," <https://www.nswbar.asn.au/pcd-suspensions-cancellations-of-pc>.

413 Section 1(1) Legal Services Act 2007.

The professional principles for lawyers focus on independence and integrity; maintenance of proper work standards; conduct in the best interests of clients; the duty to the court to act with independence in the interests of justice; and client confidentiality.⁴¹⁴

In practical terms, the LSA separates the functions of representative professional associations and regulatory bodies and their roles. The form of co-regulation in the United Kingdom introduced by the LSA required regulatory bodies to be established to operate independently from their professional associations. The LSA formalises co-regulation by requiring individuals who appear in court to be members of a professional body. That body must have rules concerning the conduct of members, and have a mechanism to enforce those rules. The combination of the professional representative arms with the regulator components provide a framework of standards and ethics (with published guidance), education and training, and mechanisms for dealing with complaints and discipline.

The LSA also permits the creation of Alternative Business Structures (ABS) to allow lawyers and non-lawyers carry out businesses together. It allows for the management and ownership of businesses that provide legal services to be

undertaken non-lawyers. This is a significant change to the 'business' of law as it allows groups of professionals to work together to provide a range of legal services as a 'one-stop shop' for professional services.

The approved regulators and licensing authorities⁴¹⁵ for legal professionals are overseen by the Legal Services Board (LSB).⁴¹⁶ The LSB is required to advance the LSA's regulatory objectives and assist the approved regulators with the development of standards.⁴¹⁷

The Legal Services Consumer Panel is an independent arm of the LSB⁴¹⁸ and was established by the LSA. The Panel advises the LSB with regard to the needs of consumers and supports the achievement of the Act's regulatory objectives. Its vision is to achieve accessible and affordable high quality legal advice for consumer.⁴¹⁹ The Panel may publish advice provided and if the LSB disagrees with the advice provided it has a legal duty to explain its reasons.⁴²⁰

The approved regulators directly regulate lawyers practising in England and Wales.⁴²¹ Under the LSA, the Solicitors Regulatory Authority (SRA) is the approved regulator and licensing authority for solicitors and the Bar Standards Board (BSB) is the approved regulator for Barristers.⁴²²

414 Section 1(3) Legal Services Act 2007.

415 Licensing authorities license alternative business structures that provide reserved legal activities.

416 Legal Services Act 2007

417 Sections 3 and 4 Legal Services Act 2007.

418 The Panel has eight lay members whose appointments are approved by the Lord Chancellor.

419 [Legal Services Consumer Panel, 2018 #147]

420 Section 10 Legal Services Act 2007.

421 Members of the legal profession may also be regulated by other approved regulators. For example Legal Executives: CILEx Regulation, Licensed conveyancers: Council for Licensed Conveyancers, Patent attorneys and Trade mark attorneys: Intellectual Property Regulation Board, Costs lawyers: Costs Lawyer Standards Board, Notaries: Master of the Faculties. In line with the now permitted ABS the Institute of Chartered Accountants in England and Wales (ICAEW) regulates and licenses reserved legal services as an approved regulator and licensing authority for taxation services in conduct of litigation, rights of audience and reserved instrument activities. In addition, is also an approved regulator for probate services, notarial services and administration of oaths. Legal Services Board, "The Institute of Chartered Accountants in England and Wales (Icaew) Approved Regulator and Licensing Authority Application."

422 "Approved Regulators," https://www.legalservicesboard.org.uk/can_we_help/approved_regulators/index.htm. the table also describes the regulatory authorities for the professions that they regulate under the LSA, including for example, Council for Licensed Conveyancers, Intellectual Property Regulation Board and the Costs Lawyer Standards Board.

The Solicitors' Regulation Authority⁴²³ (SRA) regulates the conduct of solicitors and law firms in England and Wales in the public interest through the setting and enforcing of high professional standards, supporting the rule of law and upholding the administration of justice. Its stated values are independence, professionalism, fairness, inclusivity, and progressiveness.⁴²⁴

The SRA ensuring that solicitors meet high standards and as such deals with all regulatory matters, sets its own procedures and makes decisions disciplinary matters. All solicitors must follow professional Principles and a Code of Conduct. The SRA has oversight of professional education and training, and entry standards for individuals. It also assesses the suitability of law firms to carry out legal service. The SRA sets requirements for continuing professional development. The SRA oversees indemnity insurance that requires all firms to have a minimum level of Professional Indemnity Insurance, and operates a compensation scheme.⁴²⁵

The Bar Standards Board (BSB) is the regulatory arm of the Bar Council, which is the Approved Regulator.⁴²⁶ The BSB regulates barristers and

their professional practice and specialised legal services businesses in England and Wales.⁴²⁷

The BSB determines the education and training requirements for becoming a barrister; sets continuing training requirements; sets standards of conduct for barristers; authorises certain organisations; monitors the service provided by barristers and authorised organisation; oversees complaints and undertakes required disciplinary measures against barristers and authorised organisations.⁴²⁸

The stated organisational values of the BSB include integrity (ethical standards, honesty and trust, social and environmental impact); excellence (quality, innovation, accountable); fairness (public interest, equal access to justice, inclusion); respect (supportive, knowledge sharing, collaborative); and value for money (accountable, efficient, clarity).⁴²⁹

Professional Associations

The Bar Council represents barristers in England and Wales. The Bar Council's mission focusses on promoting quality services, fair access to justice, highest standards of ethics, equality and diversity, and the development of business opportunities for barristers.⁴³⁰

423 Previously the Law Society Regulation Board. The SRA regulates solicitors and practices, including ABSs, Registered European Lawyers (RELs) and Registered Foreign Lawyers (RFLs).

424 Solicitors Regulation Authority, SRA Corporate Strategy 2017 to 2020, (9 November 2017), <https://www.sra.org.uk/sra/strategy-2017-2020.page>.

425 At the time of writing the current PII and compensation fund were under review by the SRA "Protecting the Users of Legal Services: Balancing Cost and Access to Legal Services,"

426 Legal Services Act 2007

427 The BSB also regulates unregistered barristers (barristers who do not hold practising certificates) as they are members of the profession and are subject to rules of conduct and core duties. It also regulates BSB Authorised Bodies (owners need to be lawyers, although there is provision for Alternative Business Structures to permit lay owners – the BSB does not yet have the power to authorise these structures). Others falling under BSB regulation are BSB Regulated Individuals and BSB Regulated Managers and European Lawyers who are authorised to practice law and registered with the BSB. The BSB may also have some regulatory power regarding employees of BSB Authorised Bodies, Practising Barristers and Registered European Lawyers Bar Standards Board, "People We Regulate," <https://www.barstandardsboard.org.uk/complaints-and-professional-conduct/making-a-complaint/people-we-regulate/>.

428 Bar Standards Board, "What we do", <https://www.barstandardsboard.org.uk/about-bar-standards-board/what-we-do/>.

429 Bar Standards Board, "Our Organisational Values," <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-organisational-values/>.

430 The Bar Council, "Mission," <https://www.barcouncil.org.uk/about-us/mission-statement/>.

The governance of the BSB is overseen by a 15 person board, a combination of non-barristers and barristers, Independent Observer, four committees each of which reports to the Board. The professional principles include independence and integrity; maintaining proper standards; acting in the clients' best interests; complying with the duty to the court to act with independence in the interests of justice; and ensuring client confidentiality. The Law Society is representative body for solicitors in England and Wales. The Law Society represents, promotes and support all solicitors, influences the legal and regulatory environment, pursues excellence in the profession and protects the rule of law.⁴³¹ The Law Society supports and provides guidance to members, and campaigns on matters of significance to the profession. The Law Society's vision for the profession is to be a profession that delivers the "highest quality legal services in the public interest and advancing the rule of law".⁴³²

EDUCATION, TRAINING AND ADMISSION

Government Regulation

Several bodies fulfil oversight and regulatory roles for the provision of quality education in the

higher education sector. The structure operates via the Quality Assurance Agency (QAA) and its Quality Code for Higher Education, Frameworks for Higher Education Qualifications and Law Benchmark Statement.⁴³³

The UK Standing Committee for Quality Assessment (UKSCQA) oversees higher education quality assessment arrangements. Examples of its area of oversight responsibilities include oversight of the UK Quality Code for Higher Education; the baseline regulatory requirements for provider entry to higher education; and reliability of degree standards.⁴³⁴

QAA is an independent body that sets and monitors the UK standards for higher education. Its stated aims are to UK protect standards of higher education and improve their quality to be independent and uphold values of collaboration, innovation, expertise, accountability, integrity in The QAA publishes the UK Quality Code for Higher Education, which higher education providers use to assure standards and achieve the outcomes expected of the providers. The QAA has revised and developed the Code on behalf of the UK Standing Committee for Quality Assessment (UKSCQA).⁴³⁵

431 The Law Society, "Our Strategy," <https://www.lawsociety.org.uk/about-us/our-strategy/>.

432 Ibid.

433 We note that the Quality Code has been under review and the new Code is due for publication in November 2018, with transitional arrangements using the current Code and Frameworks to operate until 2019. Other bodies that play a role in the quality of higher education in the UK outside of the formal regulators include GuildHE, Universities UK and Advance HE (the merger Equality Challenge Unit, the Higher Education Academy and the Leadership Foundation for Higher Education in March 2018 and owned by the GuildHE and Universities UK).

434 UK Standing Committee for Quality Assessment, Terms of Reference and Composition of the UK-Wide Standing Committee for Quality Assessment, (2017), <https://ukscqa.org.uk/wp-content/uploads/2017/09/UKSCQA-Terms-of-Reference-2017.pdf>.

435 The Quality Code has been revised in 2018. The Expectations and Practices of the Code have been published and the full code is expected to be published in November 2018. The revised Code centres on three elements to support quality assurance in higher education through expectation, the provision of advice and guidance for providers. UK Standing Committee for Quality Assessment and Quality Assurance Agency, The Revised UK Quality Code for Higher Education (the Expectations and Practices), (March 2018), https://www.qaa.ac.uk/docs/qaa/quality-code/revised-uk-quality-code-for-higher-education.pdf?sfvrsn=4c19f781_6.

The QAA reviews how higher education providers maintain academic standards, report of the reviews reports are published online and has a searchable directory of review findings.⁴³⁶

The Benchmark Standards for Law Degrees in England, Wales and Northern Ireland defines nature of the study and academic standards of law to guide design, delivery and review of academic courses.⁴³⁷

The SRA determines the education and training requirements that an individual must complete to be a solicitor. According to the SRA, education and training underpins the regulation of solicitors - it ensures the creation of competent and ethical practitioners. The requirements are described in the Training Regulations 2014 - Qualification and Provider Regulations.⁴³⁸

The Bar Standards Board (BSB) is responsible for the education and training requirements for the barristers.⁴³⁹ Qualification for practice as a barrister consists of the Academic Stage which is usually completed either by undertaking a recognised Qualifying Law Degree, or by undertaking another acceptable degree, and then passing a Common Professional

Examination. Following this the Vocational and Professional Stages.

Solicitors are required to hold a practising certificate⁴⁴⁰ that must be renewed annually. Barristers must be authorised to practise by the Bar Standards Board and hold an annual Practising Certificate⁴⁴¹. A provisional practising certificate may be applied for once a pupil has completed the non-practising (six-month) period of pupillage to enable the pupil to undertake the required practising period of pupillage. The BSB offers a searchable public online database containing the details of all barristers who are authorised to practise in England and Wales and who have a current practising certificate.⁴⁴²

The SRA has indicated a new centralised examination will apply from 2020, the Solicitors Qualifying Examination. According to the SRA this change to assessment requirements will promote consistent, professional standards and overcome inconsistency in the assessing of the Qualifying Law Degree, Common Professional Examination (CPE) and Legal Practice Course (LPC). The proposed format is two stages incorporating legal knowledge and practical legal skills assessments.⁴⁴³

436 Quality Assurance Agency, "Qaa Review Findings Directory," <https://www.qaa.ac.uk/reviewing-higher-education/qaa-review-findings-directory>; "Quality Assurance Reports," <https://www.qaa.ac.uk/en/reviewing-higher-education/quality-assurance-reports>.

437 Subject Benchmark Statement: Law, (July 2015), https://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/sbs-law-15.pdf?sfvrsn=ff99f781_10.

438 SRA Training Regulations 2011 Part 3 - Continuing Professional Development Regulations the Academic Stage Handbook

439 Bar Training Regulations delegated authority to Academic Stage Panel of its Qualifications Committee

440 Rules 9 and 11 SRA Practice Framework Rules 2011 describe what constitutes 'practising as a solicitor' and the requirement to hold a practising certificate. Section 1A Solicitors Act 1974: a practising solicitor is on the roll, employed in connection with the provision of legal services.

441 Law Services Act

442 Bar Standards Board, "The Barristers' Register," <https://www.barstandardsboard.org.uk/regulatory-requirements/the-barristers'-register/>.

443 Solicitors Regulation Authority, A New Route to Qualification: The Solicitors Qualifying Examination, (October 2016), <https://www.sra.org.uk/home/hot-topics/Solicitors-Qualifying-Examination.page>.

The Legal Education and Training Review (LETR) reviewed the education and training requirements of regulated and non-regulated legal services in England and Wales to assess the knowledge required to for qualification as a member of the legal profession leading to the review carried out by the SRA and forthcoming introduction of the SEQ.⁴⁴⁴

Temporary membership of the Bar is available to foreign educated and admitted barristers for the conduct of a specific case so long as insurance coverage that meets the Bar Council's requirements.⁴⁴⁵ Bar Standards Board permits qualified foreign lawyers to practise as a barrister in England and Wales on application and subject to holding include a certificate of good standing and evidence of qualifications.⁴⁴⁶

The Qualified Lawyers Transfer Scheme (QLTS), overseen by the SRA, offers a route for foreign qualified lawyers to transfer to the roll of solicitors of England and Wales, subject to eligibility requirements and successful completion of assessments.⁴⁴⁷

All practising members of the Bar are required to comply with continuing professional development (CPD) regulations.⁴⁴⁸ Barristers who have held a practising certificate for less than three years follow the CPD rules under the New Practitioners Programme (NPP).⁴⁴⁹ The NPP require barristers to undertake 45 hours of CPD within the three calendar years. A minimum of nine hours must be on advocacy; at least three hours must be on ethics; the BSB Forensic Accounting course needs to be undertaken if not previously completed during pupillage.⁴⁵⁰ Barristers of more than three years' standing, complete CPD in accordance with the rules for the Established Practitioners Programme (EPP). The suggested process for carrying out CPD focusses on planning objectives and activities for the year; producing a written record of the activities.⁴⁵¹

444 a joint project of the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and ILEX Professional Standards (IPS).

445 Insurance may be via the Bar Mutual Indemnity Fund or another insurance body.

446 Permissions for European lawyers to practice but remain regulated by their own jurisdiction is permitted on application but this may be subject to change following the withdrawal of United Kingdom from the European Union.

447 Solicitors Regulation Authority, "SRA Qualified Lawyers Transfer Scheme Regulations " (2011), <https://www.sra.org.uk/solicitors/handbook/qlts/content.page>. For recognised jurisdictions see "List of Recognised Jurisdictions and Qualified Lawyers," <https://www.sra.org.uk/solicitors/qlts/recognised-jurisdictions.page>. Exemptions for assessments are available for qualified lawyers of the European Union (EU), European Economic Area (EEA) or Switzerland (Swiss) national, or an Irish or UK lawyer.

448 Bar Standards Board, The Bar Standards Board Handbook, (2018), https://www.barstandardsboard.org.uk/media/1933294/bsb_handbook_version_3.3.pdf. Part 4, section C, The CPD Rules

449 Note that the CPD requirement for barristers changed in 2017. CPD courses are no longer accredited. On application to renew a practising certificate a declaration on maintenance of CPD is required. CPD regulations require barristers to retain their CPD record card for six subsequent calendar years. As part of its Supervision CPD the BSB may request to check records.

450 Bar Standards Board, "CPD for New Practitioners," <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/continuing-professional-development-from-1-january-2017/new-practitioners-programme/>.

451 "CPD for Established Practitioners," <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/continuing-professional-development-from-1-january-2017/established-practitioners-programme/>. On application to renew a practising certificate a declaration on maintenance of CPD is required. CPD regulations require barristers to retain their CPD record card for six subsequent calendar years. As part of its Supervision CPD the BSB may request to check records.

Solicitors regulated by the SRA's undertake the Continuing Competence requirement to reflect on the standard of service provided⁴⁵² and identify learning and development needs. This replaces CPD requirements in. The process centres on the Competence Statement for Solicitors, which consists of three parts (a statement of solicitor competence, the threshold standard⁴⁵³ and a statement of legal knowledge). Solicitors review their learning needs, address them through CPD activities and reflect on ways to incorporate new learning into their practice.⁴⁵⁴

Professional Associations

The Law Society and the Bar Council act jointly regarding the first academic stage of training via the completion of a degree or approved CPE course.⁴⁵⁵ Prospective barristers and solicitors must successfully complete a university law degree recognised by the SRA and BSB as fulfilling the academic stage of qualifying.⁴⁵⁶ A practical legal training course⁴⁵⁷ and either two-years of professional training with a law firm for solicitors or one-year pupillage for barristers.⁴⁵⁸ Registers of qualified lawyers are available on the websites of the SRA and BSB. The Law Society and Bar Council consult with the Association of Law Teachers (ALT), the

Committee of Heads of University Law Schools (CHULS) and the Society of Legal Scholars (SLS) regarding recognition of a course of study leading to the award of an undergraduate degree.⁴⁵⁹

The Committee of Heads of University Law Schools (CHULS) represents law schools to associations, regulators and other committees in the legal sector. It contributes to the development of legal education, promotes co-operation between law schools. It liaises with the ALT, SLS and others. The Society of Legal Scholars (SLS) is a learned society with charitable status for teachers of law in a university or who are otherwise engaged in legal scholarship.⁴⁶⁰ The SLS aims to advance legal education and scholarship and promotes equality, diversity and inclusion across legal academia. It is the main representative body for legal educators to the professional bodies and the Government. Similarly, the Socio-Legal Studies Association (SLSA) promotes and supports the work undertaken by socio-legal scholars with the aim "to advance education and learning and in particular to advance research, teaching and the dissemination of knowledge in the field of socio-legal studies."⁴⁶¹

452 Principle 5 of the SRA Handbook.

453 Solicitors Regulation Authority, "Threshold Standard," <https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/threshold-standard.page>.

454 "Continuing Competence and Our Competence Statement," <http://www.sra.org.uk/solicitors/cpd/tool-kit/resources/use-competence-statement.page>.

455 The Law Society and The General Council of the Bar, "Joint Statement," ed. Bar Standards Board and Solicitors Regulation Authority, *Academic Stage Handbook* (1999), <https://www.sra.org.uk/students/academic-stage.page>.

456 An undergraduate law degree or a non-law degree with a Graduate Diploma in Law. Section 21 of the Solicitors Act 1974 - To be qualified to act as a solicitor, you must have been admitted as a solicitor, be on the roll and have a practising certificate.

457 Legal Practice Course for Solicitors and the Bar Professional Training Course for Barristers.

458 The Bar Council, "Pupillage," <https://www.barcouncil.org.uk/supporting-the-bar/new-to-the-bar/pupillage/>. Pupillage is practical training supervised by an experienced barrister. The period is divided into two parts: non-practising six months; and practising six months.

459 The Law Society and The General Council of the Bar, "Joint Statement."

460 Approximately 3000 members in 2017 in the United Kingdom and Ireland.

461 Socio-Legal Studies Association, "Constitution of the Socio-Legal Studies Association."

The Association of Law Teachers (ALT) has membership spanning academic, professional and practitioner expertise who are involved and engaged in legal education. The aim of ALT “is to inspire and celebrate excellence in the teaching of law, and to share the understanding and practice of legal learning”.⁴⁶²

The objects of the ALT are to further the development, understanding and reform of the educational aspects of law and its teaching; represent the interests of members on matters relating the professional interest as teachers of law; and supports associations and institutions that benefit the aims of the ALT.⁴⁶³

ETHICS

Government Regulation

The expected standards of regulated entities and solicitors are contained in the SRA Handbook and are for the benefit of clients and the general public interest.⁴⁶⁴ The Handbook contains the SRA Principles, which are the ten ethical and professional standards required of all who are regulated by the SRA.⁴⁶⁵

The SRA Code of Conduct 2011 contains the ethical standards required of the profession and the expected outcomes for clients. The Code describes outcomes-focused conduct requirements so that appropriate outcomes for clients are achieved taking into account the ways individual firms operate.⁴⁶⁶

The SRA runs a professional ethics helpline for advice on the SRA Handbook and publishes guidance online to assist those it regulates to comply with its standards.⁴⁶⁷

The Bar Standards Board Handbook includes a code of conduct for barristers in the UK,⁴⁶⁸ and also describes Core Duties, Outcomes, Guidance, Rules and Regulations.⁴⁶⁹

Professional Associations

The Professional Standards and Ethics Committee is part of the Law Society’s Regulatory Affairs Board.⁴⁷⁰ This committee monitors professional standards and ethical values that regulate solicitors and develops proposals and submission with approval from the Regulatory Affairs Board.⁴⁷¹

462 Association of Law Teachers, <http://www.lawteacher.ac.uk/>.

463 Constitution, <http://www.lawteacher.ac.uk/docs/alt-constitution.pdf>.

464 Solicitors Regulation Authority, SRA Handbook, (1 October 2018), <https://www.sra.org.uk/solicitors/handbook/welcome.page>. (Version 20). At the time of writing, a review of the Handbook has been carried out by the SRA, with the LSB to consider a new handbook, anticipated to come into operation in 2019 “Looking to the Future: Phase Two of Our Handbook Reforms,” <https://www.sra.org.uk/sra/consultations/ltf-phase-two-handbook-reform.page>.

465 SRA Handbook. The Principles are: 1. uphold the rule of law and the proper administration of justice; 2. act with integrity; 3. not allow your independence to be compromised; 4. act in the best interests of each client; 5. provide a proper standard of service to your clients; 6. behave in a way that maintains the trust the public places in you and in the provision of legal services; 7. comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner; 8. run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles; 9. run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity; and 10. protect client money and assets

466 “SRA Code of Conduct,” SRA Handbook (2011), <https://www.sra.org.uk/solicitors/handbook/code/content.page>.

467 “Guidance,” <https://www.sra.org.uk/solicitors/guidance.page>.

468 Part 2 Bar Standards Board, The Bar Standards Board Handbook.

469 The Core Values include: upholding a duty to the court and the best interests of each client, act with honesty and integrity, maintain independence, uphold public trust, maintain client confidentiality, act with professional competency, must not discriminate, must be open and co-operative with regulators, carry out competent practice management and compliant with legal and regulatory obligations *ibid*.

470 The Law Society, “Professional Standards and Ethics Committee,” <https://www.lawsociety.org.uk/about-us/our-council/boards-and-committees/policy-and-regulatory-affairs-committee/professional-standards-ethics-committee/>.

471 “Help for Solicitors,” <http://www.lawsociety.org.uk/support-services/help-for-solicitors/>.

The Law Society offers 'Lawyerline' for solicitors to obtain advice on client care and complaints handling. Interactive ethical scenarios about ethical issues solicitors might face in practice are available via the Law Society's website.⁴⁷²

DISCIPLINE

Under *the Legal Services Act 2007*, the Office for Legal Complaints established the Legal Ombudsman for England and Wales to handle complaints about legal service providers and claims management companies in accordance with the Legal Ombudsman Scheme Rules.⁴⁷³

The Office for Legal Complaints creates the scheme rules and overseeing performance of the Ombudsman and to ensure that it promotes the regulatory objectives set out in the LSA. Complaints about the service provided should be directed to the Legal Ombudsman.

Disciplinary oversight by the SRA and BSB over those they regulate includes monitoring of professional conduct of. Complaints about the professional conduct of barristers or others regulated by the BSB can be made to the BSB, via Professional Conduct Department. The BSB may formally investigate, refer a complaint to a disciplinary tribunal. The SRA will similarly investigate complaints made about the conduct of solicitors.

The Solicitors Disciplinary Tribunal and the Bar's Disciplinary Tribunal is administered by the Bar Tribunals and Administration Service. With a right to appeal to a Divisional Court of the High Court and further to the Court of Appeal. Sanctions for solicitors include suspension from practice, financial penalty, conditions placed on a practising certificate, striking a solicitor off the role.⁴⁷⁴

USA (NY STATE) LAWYERS

REGULATORY STRUCTURE

Government Regulation

Self-regulation is the dominant form of regulation for the legal profession in the USA. The preamble to the American Bar Association's (ABA) *Model Rules of Professional Conduct* offers some insight into the position held in the USA regarding self-regulation of the profession. It emphasises the law profession's unique position based on "the close relationship between the profession and the processes of government and law enforcement" and ultimate authority of the courts over the legal profession, which act as arbiters and enforcers of the regulations adopted.⁴⁷⁵

472 "Ethics (Ethical Scenarios)," <http://www.lawsociety.org.uk/support-services/ethics/>.

473 Legal Ombudsman, Scheme Rules, (2018), <http://www.legalombudsman.org.uk/downloads/documents/publications/Scheme-Rules.pdf>.

474 Section 47 Solicitors' Act 1974.

475 American Bar Association, Model Rules of Professional Conduct: Preamble & Scope, (August 15, 2018), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/. [10]

According to the preamble, self-regulation maintains the independence of the legal profession from domination by government. If lawyers meet their professional obligations, and the profession ensures “its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar”, government regulation is not needed.⁴⁷⁶

The Restatement (Third) Of the Law Governing Lawyers⁴⁷⁷ describes, with supporting comments and citations, the laws and codes that regulate the conduct of lawyers. It addresses the general principles of regulation of lawyers, the process of regulating the profession, including Admission to Practice Law, Unauthorized Practice by a Nonlawyer and Professional Discipline.

Professional Associations

The American Bar Association (ABA) is the national representative of the legal profession in the United States. It aims to benefit its members, the profession and the public, defend liberty and deliver justice. Membership of the American Bar Association is voluntary. The association protects the independence of the profession and provides members with opportunities to improve professional skills and expertise.⁴⁷⁸

The ABA accredits and approves law schools – The Council of the Section of Legal Education and Admissions is recognised by the U.S. Department of Education (DOE) as the national accrediting agency for programs leading to the J.D. ABA-approved law schools are recognised by all state supreme courts satisfying the legal education requirements to qualify for the bar examination.⁴⁷⁹

The New York State Bar Association (NYSBA)⁴⁸⁰ is the largest voluntary state bar association in the USA.⁴⁸¹The objectives of the NYSBA include the promotion of practice standards and professional integrity.⁴⁸² The NYSBA’s is governed by the House of Delegates (actions undertaken by the House become official policy of the association) and an Executive Committee with authority (so long as it is consistent with NYSBA policy and the House of Delegates actions) to act on behalf of the association. Twenty-six sections on substantive law and more than 60 standing, special and other committees form the structure of the NYSBA. The sections monitor legislation, offer professional development opportunities, conduct research and make policy recommendations to the NYSBA House of Delegates substantive law fields, and the committees focus on specific issues.⁴⁸³

476 Ibid. [10]-[12]

477 American Law Institute, Restatement of the Law Third, the Law Governing Lawyers (2000).

478 American Bar Association, "About the ABA," https://www.americanbar.org/about_the_aba/.

479 "Legal Education and Admissions to the Bar," https://www.americanbar.org/groups/legal_education/.

480 Established in 1877. Other associations include New York City Bar Association, New York County Lawyers Association, New York State Trial Lawyers Association, New York State Association of Criminal Defense Lawyers, Injured Workers Bar Association of New York State, National Employment Lawyers Association of New York.

481 Membership comprises of six classes: Active, Associate, Affiliate, Honorary, Sustaining and Law Student.

482 New York State Bar Association, "About Nysba," <http://www.nysba.org/CustomTemplates/SecondaryStandard.aspx?id=27825>.

483 Committee on Legal Education and Admission to the Bar, Committee on Legislative Policy, Committee on Membership, Nominating Committee, President's Committee on Access to Justice

Committee on Procedures for Judicial Discipline, Committee on Professional Discipline, Committee on Professional Ethics.

At the federal level, the NYSBA has a Governmental Relations Office (GRO) for communication of NYSBA perspectives on issues affecting members and legal services.

The National Organization of Bar Counsel (NOBC) promotes improvements to the quality of disciplinary and regulatory services. Membership is available to legal professionals who regulate the practice of law. Members include those who work in, “regulatory authorities, agencies, and unified and voluntary bar associations” in regulatory roles including, “lawyer and judicial discipline, legal and judicial ethics and education, promotion of professionalism, and the unauthorized practice of law”.⁴⁸⁴ The not for profit organisation was established to promote professionalism and effectiveness of lawyer disciplinary counsel agencies in the United States, and now include members from Canada, and Australia.

The NOBC is represented in the ABA House of Delegates. It promotes communication and cooperation regulation of legal professionals across national and international jurisdictions. It will assist in inter-jurisdictional and transnational disciplinary and regulatory issues; contributes to the development of reports and standards regarding legal ethics and the regulation of the legal profession; and will advocate on matters relating to the regulation

of the practice of law. Members benefit from access to research and information on, ethics, professionalism and the regulation of the practice of law; and educational opportunities.

EDUCATION, TRAINING AND ADMISSION⁴⁸⁵

Government Regulation

Legal education in the USA requires successful completion of a juris doctor degree from a law school in the US, or equivalent qualifications recognised on a state by state basis. Licensing is state-based, with successful completion of a bar examination required. Character and fitness tests also apply. Lawyers may engage in the practice of law only in the state where they are licensed. Temporary practice by lawyers licensed in other states is permitted. A lawyer admitted to practise in one state may be admitted to practise in another state if legal practise has been carried out for a minimum length of time.⁴⁸⁶

The New York State Board of Law Examiners administers the bar examination for admission to practice law in New York State ensures that lawyers practising in New York are competent and qualified to do so.⁴⁸⁷

484 National Organization of Bar Counsel, "About NOBC," <https://www.nobc.org/page-18044>.

485 New York State Judicial Institute offers continuing education and training through a partnership for judges and justices of the Unified Court System New York State Judicial Institute, <https://www.nycourts.gov/ip/judicialinstitute/index.shtml>.

486 For admission requirements in New York State see the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law Part 520.

487 Established in 1894, it has authority to administer the exam under the New York State Court of Appeals. The Court of Appeals appoints board members New York State Board of Law Examiners, <https://www.nybarexam.org/Default.html>.

Since 2016, New York has used the Uniform Bar Examination (UBE) consists of three components: the Multistate Bar Exam; the Multistate Performance Test; and the Multistate Essay Examination. A large number of states are using the UBE in recognition of shared legal skills and knowledge, an improving the ease with which lawyers can transfer jurisdictions through uniformity of assessment. To qualify for admission in New York, an applicant who achieves the required UBE score⁴⁸⁸ must also meet the New York State bar requirement to undertake an online course on New York law (New York Law Course) and pass an online examination on New York law (New York Law Exam).⁴⁸⁹ Applicants need to pass the Multistate Professional Responsibility Examination (MPRE), which measures knowledge and understanding of the standards related to the professional conduct of lawyers.⁴⁹⁰ Applicants for admission must also show they possess the necessary skills and professional values to competently practice law.⁴⁹¹

Additional requirements of applicants for admission in New York include 50 hours of supervised pro bono services prior to making an application for admission to the bar.⁴⁹²

completion of a minimum of 64 units of classroom courses at law school. On successful completion of these requirements and the examinations applicants are certified for admission to a Committee on Character and Fitness.⁴⁹³

Admission without examination is possible for applicants who have the certified legal education to qualify, have practiced for five of the preceding seven years and who are admitted to practice in a reciprocal jurisdiction, and meet the character and general fitness requisites.

Continuing legal education is mandatory in New York State. The objective of the New York State's Continuing Legal Education program is to enhance the professionalism of the New York Bar through the collaborative efforts of the judiciary and the bar.⁴⁹⁴ The Continuing Legal Education Board oversees the course accreditation process. Regulations set the mandatory requirements for continuing legal education. The program includes a transitional legal education program for newly admitted lawyers and a legal education program for all other admitted lawyers.⁴⁹⁵

488 Currently the requirement in New York State is a score of 266 or higher.

489 Applicants who complete the UBE in another jurisdiction can use the score earned on the UBE in that jurisdiction and apply for admission in New York. NYLC can be undertaken up to one year prior to, or three years subsequent to, passing the UBE. The NYLC must be completed prior to applying for the NYLE.

490 National Conference of Bar Examiners, "Jurisdiction Information: New York," <http://www.ncbex.org/jurisdiction-information/jurisdiction/ny>.

491 New York Rules for the Admission of Attorneys and Counselors at Law (22 NYCRR 520.18). Five pathways are available to satisfy the skills competency and professional values requirement: law school certification; 15 credits of practice-based experiential coursework; successful completion of the Pro Bono Scholars Program, pursuant to section 520.17; completion of a supervised post-graduate, six-month apprenticeship in a law office; or practice in another jurisdiction for full-time for one year, or part-time for two years.

492 (§520.16)

493 Application is made to one of four Departments of the Appellate Division of State Supreme Court and a personal interview is carried out.

494 New York State Continuing Legal Education Board, "The Legal Profession - Continuing Legal Education," <http://ww2.nycourts.gov/attorneys/cle/index.shtml>.

495 §1500.1 "CLE Program Rules," JOINT RULES of the APPELLATE DIVISIONS 22 NYCRR 1500 (January 1, 2018), <http://ww2.nycourts.gov/sites/default/files/document/files/2018-03/programrules.pdf>,

Continuing Legal Education Board accredits and oversee the courses, programs and other educational activities that will satisfy the requirements of the Program; determines the CLE credit hours given for particular courses or programs; adopt or repeal regulations and forms consistent with these rules; examine course materials and the qualifications of continuing legal education instructors; consult and appoint committees in furtherance of its official duties as necessary; foster and encourage the offering of accredited courses and programs, particularly in geographically isolated regions; and report annually.⁴⁹⁶

New York permits foreign lawyers to register to work as inside corporate counsel on a temporary basis, enabling them to provide advice to clients on issues related to the his or her work that of his or her employer.⁴⁹⁷ In-house counsel who are admitted in a U.S. jurisdiction other than New York are also permitted to register in this manner.⁴⁹⁸

Biennial registration of all lawyers admitted in New York state is required, whether they are resident or non-resident, active or retired, or practicing law in New York or in another jurisdiction.⁴⁹⁹

Professional Associations

The National Board of Trial Advocacy is accredited by the American Bar Association to certify specialisation via examination in areas including, criminal and civil law, social security, disability advocacy, family and civil trial law advocacy.⁵⁰⁰ More than 2400 lawyers are certified by the NBTA. Certification remains valid for five years subject to meeting expected standards and annual reporting.

ETHICS

Government Regulation⁵⁰¹

The New York Rules of professional Conduct are based on the American Bar Association (ABA) Model Rules of Professional Conduct. The ABA Model Rules of Professional Conduct are models for the ethics rules of most jurisdictions in the United States.⁵⁰² The conduct of lawyers in New York State is regulated by the Rules of Professional Conduct.⁵⁰³ The Rules have been adopted by the Appellate Divisions of the New York State Supreme Court and are published in the Joint Rules of the Appellate Division.⁵⁰⁴

496 Ibid.

497 22 NYCRR Part 523.

498 22 NYCRR Part 522.

499 Section 468-a of the Judiciary Law and 22 NYCRR Part 118 of the Rules of the Chief Administrator of the Courts.

500 National Board of Trial Advocacy, "About Us," <https://www.nbtalawyers.org/about>. Specialty certification is recognised by the New York State Bar Association under Rule 7.4 Identification of Practice and Specialty.

501 We note that the Commission on Judicial Conduct is constitutionally mandated with the authority to discipline members of the judiciary. The Court of Appeals reviews decisions of the Commission New York State Commission on Judicial Conduct, www.cjc.ny.gov.

502 American Bar Association, Model Rules of Professional Conduct, (2018), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/.

503 New York State Bar Association, New York Rules of Professional Conduct, (2009), <https://www.nysba.org/DownloadAsset.aspx?id=50671>

504 22 NYCRR 1200.0 <https://www.nycourts.gov/LegacyPDFS/rules/jointappellate/NY-Rules-Prof-Conduct-1200.pdf>. as adopted by the Appellate Division of State Supreme Court

504 22 NYCRR 1200.0 <https://www.nycourts.gov/LegacyPDFS/rules/jointappellate/NY-Rules-Prof-Conduct-1200.pdf>

The Rules as published by the New York State Bar Association contain a Preamble, Scope and Comments (these have not been adopted by the Appellate Divisions). The Preamble, Scope and Comments guide lawyers.

The Securities and Exchange Commission (SEC) sets minimum standards of professional conduct for lawyers representing issuers before the SEC,⁵⁰⁵ as required under the Sarbanes-Oxley Act.⁵⁰⁶ These standards are supplementary to the standards of any jurisdiction where a lawyer is admitted or practices.⁵⁰⁷ The standards place a reporting obligation on a lawyer representing an issuer, and appearing and practicing before the SEC to report a “material violation” of securities laws or breach of fiduciary duty and subject the lawyer to penalties and remedies and disciplinary action of the SEC.⁵⁰⁸

Public Officers Law in New York regulates the conduct of lawyers employed by government and sets a code of ethics for state employees⁵⁰⁹. The New York State Standards of Civility for the legal profession describe principles of behaviour “to encourage lawyers, judges and court personnel to observe principles of civility and decorum, and to confirm the legal profession’s rightful status as an honorable and respected profession”.⁵¹⁰

Professional Associations

In addition to publication of the Rules of Conduct with commentary, the NYSBA offers ethical guidance concerning an individual lawyer’s professional conduct on written request, either as an informal letter response or as a published advisory opinion.⁵¹¹

DISCIPLINE

Government Regulation

In New York State, the Appellate Division of State Supreme Court and its appointed discipline and grievance committees investigate complaints.

Professional Associations

The NYSBA’s Committee on Professional Discipline maintains and improves the effectiveness and fairness of disciplinary system for lawyers in New York State. It monitors other the disciplinary and grievance committees, reviews lawyer conduct rules and applicable legislation, and procedural rules.⁵¹²

505 See the Code of Federal Regulations relating to Commodity and Securities Exchanges, 17 CFR § 205.

506 Section 307 Sarbanes-Oxley Act 2002.

507 17 CFR § 205.1 2005 Scope and Purpose.

508 17 CFR § 205.6 Sanctions and Discipline.

509 § 74 Code of Ethics <https://www.albany.edu/hr/assets/Public-Officers-Law.pdf>

510 New York State Unified Court System, "Standards of Civility," (October 1997).

511 New York State Bar Association, "Ethics Opinions," <http://www.nysba.org/Ethics/>.

512 "Committee on Professional Discipline," <http://www.nysba.org/A14800/>.

A member of the NYSBA may be suspended or expelled from the Association for misconduct in the members' interactions with the Association, or profession. Suspension or expulsion may also occur on recommendation of the Committee on Professional Discipline. Automatic expulsion occurs following disbarment or suspension of the member from the practice of law in New York State, following a final court order of such.⁵¹³

Discipline for violations of the Rules of Professional Conduct include admonishment, reprimand, censure, suspension or loss of his or her license to practice law. Discipline for improper conduct includes caution, admonition or reprimand. Instances of serious misconduct may be referred to court by the committee. If disciplinary action is taken after a hearing the decision will be made public.

Financial loss caused by dishonest conduct by a lawyer may be reimbursable via the Lawyers' Fund for Client Protection. The fund was created by the State Legislature and is funded through a percentage of registration to practice fees. The mission statement of the fund incorporates consumer protection from dishonest behaviour, preservation of the integrity of the profession and protection of honest lawyers, and promotion of the administration of justice.⁵¹⁴ The Attorney-Client Fee Dispute Resolution Program may arbitrate or mediate fee disputes on application.⁵¹⁵

⁵¹³ Section 5 Termination of Membership.

⁵¹⁴ The Lawyers' Fund For Client Protection of the State of New York, <http://www.nylawfund.org/>.

⁵¹⁵ New York State Unified Court System, "Attorney-Client Fee Dispute Resolution Program," <http://www.nycourts.gov/admin/feedispute/index.shtml>.

CANADIAN (ONTARIO) LAWYERS

REGULATORY STRUCTURE

Government Regulation

Power to regulate lawyers in the public interest is delegated to the law societies by provincial legislatures. Provincial legislation and supporting regulations in Ontario, give the legal profession self-regulatory power. Regulation of the Canadian legal profession is carried out at the provincial level by self-regulatory bodies, in the case of Ontario, the Law Society of Ontario. Two main statutes are the Solicitors Act, which describes the provision of legal services in Ontario and the Law Society Act, which gives the Law Society of Ontario the power to regulate the legal profession.

The provincial bodies established the Federation of Law Societies of Canada as a national body to coordinate the activities of the provincial law societies and to promote national standards.

The Law Society of Ontario (LSO) governs Ontario's lawyers⁵¹⁶ in the public interest in accordance with the Law Society Act and its regulations. The LSO's by-laws and Rules of Professional Conduct determine the professional and ethical obligations required of lawyers practising in Ontario which promote high standards of learning, competence and

professional conduct. The LSO "has a duty to protect the public interest, to maintain and advance the cause of justice and the rule of law, to facilitate access to justice for the people of Ontario, and to act in a timely, open and efficient manner".⁵¹⁷ The Law Society of Ontario governs lawyers⁵¹⁸ in the public interest by establishing and maintaining high educational, professional and competency standards. The LSO links self-governance with maintenance of the public interest. To maintain the privilege of self-governance, the public interest must always be of paramount concern to the LSO.

Functions of the LSO include the setting of standards for learning, professional competence and professional conduct for lawyers.⁵¹⁹

The principles that guide the functions of the law society include the maintenance of the rule of law and justice; the facilitation of access to justice; the protection of the public interest; and efficiency and openness in the provision of legal services.⁵²⁰

Governance of the LSO is through a board of directors,⁵²¹ they determine the direction and policy of the LSO. The Benchers also adjudicate on discipline matters conduct, licensing, competence and capacity. The LSO has a number of Committees that guide policy of the LSO, with particular relevance to this report, the Professional Development & Competence Committee and the Professional Regulation Committee.

516 More than 50,000 lawyers and 8000 paralegals are governed by the Law Society.

517 Law Society of Ontario, "About the Law Society," <http://www.lso.ca/about-us/>.

518 Established in 1797. The Law Society also govern paralegals. More than 50,000 lawyers and over 8,000 licensed paralegals

519 Section 4.1 Law Society Act

520 Section 4.2 Law Society Act

521 Law Society of Ontario, "Governance," <http://www.lso.ca/governance/>. Board members are known as Benchers and meet regularly at Convocation. Forty benchers from the legal profession are elected every four years and eight lay benches are appointed by government (the Lieutenant Governor-in-Council).

Legislation requires all Canadian lawyers to hold membership of a law society and be governed by the rules of that law society. There is a distinction made between the law societies and their regulatory functions and the associations of the legal profession to which membership is voluntary. For example, associations such as the Canadian Bar Association represent the interests of their members but do not regulate in a formal sense. Membership in bodies, such as the Canadian Bar Association, is voluntary.

Professional Associations

The coordinating Body for Canada's Law Societies is the Federation of Law Societies of Canada (FLSC). The mission of the FLSC is to coordinate its member law societies, promote the development of national standards, and harmonised law society rules and procedures.⁵²² FLSC provides access to Canadian laws and court decisions.⁵²³ The establishment of a national coordinating body suggests a more consistent approach being adopted by the law societies and revised approach to self-regulation. As such, the governing council is nominated by the

provincial law societies and it does not possess power to impose rules on them.

The Canadian Bar Association⁵²⁴ works to protect the professional and commercial interests of the legal profession and to promote the rule of law. It focuses on improvement to law, the administration of justice access to justice skills, ethical standards of the profession.⁵²⁵ The Ontario Bar Association (OBA), is a branch of the CBA, and promotes the justice system and the rule of law in Ontario, the interests of members, and aims to provide high quality continuing professional development for lawyers.⁵²⁶

The Advocates' Society, aims to improve access to justice and the legal profession, offers mentoring and networking for advocates, and education programs. The Society makes submissions to governments and regulatory organizations.

522 Federation of Law Societies Canada, "Our Mission," <https://flsc.ca/about-us/our-mission/>.

523 Canadian Legal Information Institute (CanLII) was established by the law societies of Canada through the Federation of Law Societies of Canada as a non-profit organization for the purpose of making law accessible online. Its operational funding is provided entirely by the law societies of Canada. See Canadian Legal Information Institute (CanLII), "About CanLII," <https://www.canlii.org/en/info/about.html>.

524 The Canadian Bar Association was formed in 1896 and incorporated in 1921 by an Act of Parliament. It is affiliated with the Commonwealth Law Association, International Bar Association and the Union internationale des avocat(e)s.

525 Canadian Bar Association, "Mission & Vision," <https://www.cba.org/Who-We-Are/About-us/Mission-and-Vision>.

526 Ontario Bar Association, "Vision & Mission," <https://www.oba.org/About-US/About-Us/Vision-Mission>.

EDUCATION, TRAINING AND ADMISSION

Government Regulation

The Law Society regulates, licenses and disciplines Ontario's legal profession in accordance with the Law Society Act and the Law Society's rules, regulations and guidelines.⁵²⁷ To provide legal services, lawyers are licensed after showing they meet the required competencies. The LSO issues a *Lawyer Licensing Policy* that describes the rules and procedures for completion of the licensing process and also publishes the Licensing Examination Rules and Protocol.

The education requirement for individual wishing to practice law are a Bachelor of Laws degree or a Juris Doctor degree from an Accredited Law School or has received a certificate of qualification from the National Committee on Accreditation (NCA).⁵²⁸

Meet the good character requirements set by the LSO also need to be met by prospective lawyers.⁵²⁹ All provinces accredit law schools, via either the province's law society or the NCA.

The NCA⁵³⁰ is a standing committee of the FLSC. The NCA issues a Certificate of Qualification, required by law societies, on successful

completion of required exams or courses. The NCA applies a national standard to assess the legal education and professional background of an applicant with qualifications from outside Canada⁵³¹ before an application for admission to a law society can be made. Following receipt of the certificate, the usual process for admission is followed.

Professional Associations

In Ontario, after completion of a law degree at an accredited law school, candidates must pass the Barrister Licensing Examination or the Solicitor Licensing Examination. Candidates must also complete a practical training program, comprising of either ten months of articles under the supervision of a practising lawyer, or an eight-month Law Practice Program.⁵³² Character and fitness tests are also required. A register of lawyers qualified to practise in Ontario is maintained by the law society and is published online. A National Mobility Agreement facilitates the recognition of credentials and the transfer of lawyers between Canada's common law jurisdictions allow lawyers to practise for up to 100 days in another province before being requiring a permit.⁵³³ CPD is required of lawyers⁵³⁴ licensed to practise in Ontario for the purpose of maintaining and extending upon professional knowledge and skills.

527 Law Society of Ontario, "About the Law Society".

528 Sections 3 and 5 Licensing Process Policies

529 Section 6 Licensing Process Policies

530 Federation of Law Societies Canada, "About the Nca," <https://flsc.ca/national-committee-on-accreditation-nca/about-the-nca/>.

531 Or an application with qualifications and experience from a Canadian civil law jurisdiction. Barreau du Québec and the Chambre des notaires du Québec have separate processes for assessing qualifications from outside their jurisdiction.

532 Similar examination and practical experience training are required in other provinces.

533 Permission to practise in Québec on specific matters is permitted on application.

534 Paralegals in Ontario are also required to fulfil educational requirements for CPD.

CPD fulfils an element of the Law Society's function that requires it to ensure "that all persons who practise law or provide legal services in Ontario meet standards of learning, professional competence and conduct that are appropriate for the legal services they provide". Lawyers must undertake at least 12 CPD Hours in Eligible Educational Activities within one year.⁵³⁵ A minimum of three Professionalism Hours⁵³⁶ must be completed within the timeframe, encompassing professional responsibility, ethics and/or practice management themes. One hour of which must address issues of equality, diversity and inclusion.⁵³⁷

Professional Associations

The Law Foundation of Ontario has a mandate to improve access to justice, and awards grants to support access.⁵³⁸ Granting programs include support for law schools and the profession through its experiential learning opportunities that foster commitment to high ethical standards, pro bono work and the promotion of diversity.⁵³⁹ The CBA and the Advocates' Society offers professional development to members of the profession across Canada.⁵⁴⁰

ETHICS

Government Regulation

The Law Society Act empowers the LSO as the provincial legal regulator to enact rules to govern lawyers practising within their jurisdiction. The Rules of Professional Conduct⁵⁴¹ are enacted by the LSO.⁵⁴² The FLSC publishes a national Model Code of Professional Conduct which provincial societies adopt. Amendments to the rules reflecting the Federation of Law Societies of Canada's Model Code of Professional Conduct came into effect in Ontario in 2014⁵⁴³ The FLSC national standards regarding discipline promote consistency across the provincial jurisdictions.

Professional Associations

Key elements of the LSO's Rules of Professional Conduct include the duty placed on lawyers to practice law and discharge their professional responsibilities with integrity.⁵⁴⁴ Legal services provided by a lawyer need to be to the standard of a 'competent lawyer' "who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client".⁵⁴⁵

535 Administrative suspension and late fee charged by the LSO for failure to comply with the CPD requirements. 536 The Professionalism Hours must be accredited by the Law Society.

537 The requirement for Professionalism Hours for lawyer and paralegal to include one hour focussed on advancing equality, diversity and inclusion is a recent change to CPD requirements. The transition period requires three hours between 2018 and 2020 to be focussed on advancing equality, diversity and inclusion.

538 Law Foundation of Ontario, "Who We Are," <http://www.lawfoundation.on.ca/who-we-are/>.

539 "Law Schools," <http://www.lawfoundation.on.ca/what-we-do/law-schools/>. The Foundation also contributes to the funding of Legal Aid Ontario.

540 Canadian Bar Association, "Cba Advantage," https://www.cbapd.org/cbaadvantage_en.aspx.

541 Law Society of Ontario, "Rules of Professional Conduct," (2000), <http://www.lsoc.on.ca/list.aspx?id=671>.

542 Until 2017 the Law Society of Ontario was known as the Law Society of Upper Canada (founded in 1797).

543 Law Society of Ontario, "Rules of Professional Conduct Amendment History," <https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct/amendment-history>. Federation of Law Societies Canada, "Implementation of the Model Code," <https://flsc.ca/resources/implementation-of-the-model-code/>.

544 2.1-1 Law Society of Ontario, "Rules of Professional Conduct".

545 3.1-1 *ibid*

Under the Rules of Professional Conduct a competent lawyer: knows substantive and procedural legal principles; investigates facts, identifies issues and possible options; advises clients; applies appropriate skills, communicates and performs all functions in timely and effective manner; complies in letter and spirit with the *Law Society Act*; recognises limitations in ability; undertakes professional development opportunities; and adapts to the changing professional environment.⁵⁴⁶

A failure to meet the professional competency standard arises if a lawyer is deficient in: knowledge, skill or judgment; attention to the interests of clients; the records, systems or procedures of the licensee's professional business, or other aspects of the licensee's professional business. There must be a reasonable apprehension that the quality of service to clients may be adversely affected by the deficiencies.⁵⁴⁷ The Rules also require lawyers to act with honesty and candour, courtesy and good faith, uphold client confidentiality, and promote public respect for the administration of justice.⁵⁴⁸

DISCIPLINE

The LSO has statutory jurisdiction deal with complaints relating to the conduct, competence and capacity of lawyers. The LSO's Complaints and Compliance Department deals with complaints made about lawyer conduct for issues including those that relate to services provided; ethics or honesty; misleading, or discriminatory behaviour; improper handling of funds. A finding of the Complaints and Compliance department that relates to professional misconduct will be directed to the Professional Regulation Division.⁵⁴⁹

If information is obtained by the LSO suggesting professional misconduct or conduct unbecoming a licensee an investigation is permitted.⁵⁵⁰ On reasonable suspicion that professional misconduct conduct unbecoming a licensee, has occurred further investigation and the production of information and documents can be required.⁵⁵¹ Individuals who practise law without a licence may be prosecuted by the LSO. Penalties that may be imposed include reprimands, conditions placed on practise, fines, suspension or disbarment.

⁵⁴⁶ 3.1-2 *ibid.*

⁵⁴⁷ Section 41 Law Society Act

⁵⁴⁸ 3.2-2 Honesty and Candour; 5.1-5, 7.2-1 Courtesy and Good Faith; 3.3-1 Confidential Information; 5.6-1 Encouraging Respect for the Administration of Justice Law Society of Ontario, "Rules of Professional Conduct".

⁵⁴⁹ Intake & Resolution department

⁵⁵⁰ Section 49.3(1) Law Society Act <https://www.ontario.ca/laws/statute/90l08#BK70>. Carried out by Investigation Services.

⁵⁵¹ Section 49.3(2) Law Society Act <https://www.ontario.ca/laws/statute/90l08#BK70>

The Complaints Resolution Commissioner reviews complaint handling practices and outcomes of investigations and decisions independently from the LSO's other regulatory activities. It offers consumers of legal services a way to review the actions of the LSO in deciding to close a file.⁵⁵² As such, the Commissioner can recommend that the LSO take further action regarding a complaint.⁵⁵³

The Proceedings Authorization Committee (PAC) reviews matters referred to it by the LSO relating to the conduct or capacity of a licensed lawyer.⁵⁵⁴ It can provide directions relating to the conduct of an audit, investigation or review. If the PAC is satisfied that on reasonable grounds a lawyer has contravened the Act,⁵⁵⁵ or is incapacitated, or has failed/is failing to meet that standards of professional competence it can authorise the LSO to apply for a determination by the Hearing Division of the Tribunal.⁵⁵⁶ The Law Society Tribunal adjudicates on regulatory matters independently from the LSO.⁵⁵⁷ Matters are initially heard in the Hearing Division and may be appealed to the Appeal Division. Adjudicators include benchers, lawyers, paralegal and lay appointees. The Law Society Tribunal hears and decides regulatory matters in a manner that upholds the tribunal's core values of fairness and

impartiality, quality and continually improved processes, transparent decisions and policies, and the timely resolution of matters. A code of conduct guides tribunal adjudicators on their professional and ethical responsibilities.⁵⁵⁸

Complaints Services are offered by the Law Society, which receives and responds to complaints about lawyers and paralegals and runs a Compensation Fund⁵⁵⁹ for restitution following dishonesty of a lawyer.

The LSO adheres to the National Discipline Standards which promote uniformity over how law societies handle complaints and discipline processes for members of the legal profession. There are 21 standards that focus on timeliness, transparency, accessibility, hearings, qualifications of investigators and adjudicators.⁵⁶⁰

552 Section 4 Law Society By-Law 11 as amended May 25, 2017 <https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/b/by-law-11-regulation-conduct-05-25-2017.pdf>

553 Section 7(4) Law Society By-Law 11 as amended May 25, 2017 <https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/b/by-law-11-regulation-conduct-05-25-2017.pdf>

554 Section 46 By-Law 11

555 Section 33 Law Society Act regarding professional misconduct or conduct unbecoming a licensee.

556 Section 51 By-Law 11. The PAC may also approve, or give directions for, the informal resolution of a matter; invite a lawyer to receive advice about conduct professional competence from a panel of benchers; or provide a letter of advice regarding conduct or professional competence.

557 It has jurisdiction to adjudicate matters for both lawyers and paralegals. Sections 33 and 34 Law Society Act – contravening a license and for the jurisdiction and procedural provisions for the Tribunal see, Ontario Regulation 167/07 Hearings Before The Hearing And Appeal Divisions <https://www.ontario.ca/laws/regulation/070167>

558 Law Society Tribunal Adjudicator Code of Conduct <https://lawsocietytribunal.ca/Pages/Mainpage.aspx#114>

559 See Section 52 Law Society Act.

560 Federation of Law Societies Canada, "National Discipline Standards," (June 11, 2018).

FINANCIAL PLANNERS

FINANCIAL PLANNERS

INTRODUCTION

This part of the report considers the structures and practices in Australia, the United Kingdom, Canada and the USA that regulate financial planners.⁵⁶¹ There is an emerging and developing profession of financial planners. This comparative assessment of the different approaches to regulating the activities of financial planners provides insight into the ways regulatory structures are changing. The mapping exercise shows formal professional structures are evident, with increasing formal regulation and more structured roles for professional associations. The emerging structures are in a similar way to the more established international standards of the accountancy profession.

FINANCIAL PLANNERS INTERNATIONALLY

REGULATORY STRUCTURE

The Financial Stability Board (FSB) established in April 2009, monitors and makes recommendations about the international global financial system. It plays a coordinating

role to promote international financial stability by promoting cooperation and coordination between national financial authorities and international standard-setting bodies. This is aimed at developing and improving policies regarding regulation and supervision. The FSB also collaborates with the International Monetary Fund (IMF).

The International Organisation of Securities Commissions (IOSCO) brings together the securities regulators from around the world. The IOSCO promotes cooperation to develop, implement and promote adherence to internationally recognised standards for securities regulation to “protect investors, maintain fair, efficient and transparent markets, and seek to address systemic risks”. IOSCO works with the G20 and the FSB; and its Objectives and Principles of Securities Regulation⁵⁶² is used by the International Monetary Fund (IMF) and the World Bank to evaluate the securities sector for the Financial Sector Assessment Programs (FSAPs) which evaluate financial sectors of individual countries.⁵⁶³

⁵⁶¹ For the purpose of this report, we refer to Financial Planners but we that the term Financial Adviser, is at times used interchangeably with ‘planner’.

⁵⁶² International Organization of Securities Commissions, Objectives and Principles of Securities Regulation, (May 2017), <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD561.pdf>.

⁵⁶³ “About IOSCO,” https://www.iosco.org/about/?subsection=about_iosco.

Professional Associations

The Financial Planning Standards Board (FPSB) aims to establish financial planning as a global profession through global professional standards in financial planning and the Certified Financial Planner (CFP) designation.⁵⁶⁴

The FPSB has established global professional standards and certification requirements for financial planning and financial advice and enforces compliance with those standards. The membership network of the FPSB delivers the CFP certification and other FPSB-accredited qualifications in 33 countries and territories.⁵⁶⁵ The FPSB has a global financial planning standards framework that focuses on competency and education, ethics and professional practice standards to promote recognition of financial planning as a global profession.⁵⁶⁶

The CFP certification requirement includes completion of education courses described in the FPSB's Financial Planning Education Framework; assessment that includes work experience, demonstrated financial planning skills, and a CFP certification exam. Certification requires agreement to adhere to the FPSB's Code of Ethics Professional Responsibility and Financial Planning Practice Standards and provide verified fitness to practice

documentation. Recertification depends upon the completion of at least 30 hours of Continuing Professional Development every two years, of which two hours include topics on the FPSB's Code of Ethics and Professional Responsibility and Financial Planning Practice Standards.⁵⁶⁷

AUSTRALIAN (NSW) FINANCIAL PLANNERS

REGULATORY STRUCTURE

Government Regulation

Financial markets and financial services are regulated in Australia by the ***Corporations Act 2001*** (Corporations Act).⁵⁶⁸ The Australian Securities and Investment Commission (ASIC) is established under and administers the ***Australian Securities and Investments Commission Act 2001*** (ASIC Act), it carries out its functions in accordance with the Corporations Act. ASIC is an independent Commonwealth Government regulator for corporations, markets, financial services and consumer credit.

⁵⁶⁴ Financial Planning Standards Board, "About FPSB: Leading the Global Financial Planning Profession," <https://www.fpsb.org/about/>. Similar to CPA designation for accounting professionals. The Financial Planning Services Board owns the CFP designation, except for in the USA (CFP Board owns the CFP brand in the USA).

⁵⁶⁵ Financial Planning Association (FPA) (Australia), Chartered Institute for Securities & Investment (CISI) (UK), CFP Board (USA), Financial Planning Standards Council (FPSC).

⁵⁶⁶ Financial Planning Standards Board, "Fpsb's Global Financial Planning Standards," <https://www.fpsb.org/standards-for-the-profession/framework/>.

⁵⁶⁷ "CFP Certification Requirements," <https://www.fpsb.org/cfp-certification/cfp-certification-requirements/>.

⁵⁶⁸ See in particular, Chapter 7.

The regulation of the financial advising profession in Australia is in the process of change in accordance with the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*. The amendment is aimed at raising the education, training and ethical standards of financial advisers. It does this by requiring “relevant providers to hold a degree or higher or equivalent qualification, pass an exam, undertake a professional year, undertake continuous professional development and comply with a Code”.⁵⁶⁹

This new framework of professional standards is implemented by the Financial Adviser Standards and Ethics Authority (FASEA). FASEA is required under statute to approve bachelor or higher degrees, or equivalent qualifications; approve an exam; set requirements for work and training (Professional Year); set requirements for continuing professional development (CPD); specify a word or expression to refer to a professional relevant provider (PRP expression); make a Code of Ethics; and respond to applications for approval of foreign qualifications.⁵⁷⁰

The statutory licensing requirements require financial services businesses to hold an Australian financial services (AFS) licence or

be authorised by a licensee to operate. These statutory requirements are overseen by ASIC. The focus is placed on regulating the entity providing a legal service as opposed to the individual ‘financial planner’. The AFS licensee may appoint ‘authorised representatives’.⁵⁷¹ Authorised representatives are required to be listed on a register administered by ASIC.⁵⁷²

Professional Associations⁵⁷³

The Financial Planning Association (FPA) is the largest represented professional association for financial planners and advisors in Australia.⁵⁷⁴

The FPA is a member of the FPSB and has adapted and adopted the Practice Standards of the FPSB. Governance of the association is by an elected Board and in accordance with its constitution. The FPA represents the professional interests of financial planners, acts in the public interest for the purpose of achieving fair and competent financial planning advice, raises public awareness and confidence in the profession, and promotes compliance with professional and ethical standards.⁵⁷⁵

569 Financial Adviser Standards and Ethics Authority, FASEA Standards Summary, (November 2018), <https://www.fasea.gov.au/wp-content/uploads/2018/11/Standards-Summary.pdf>.

570 s921U(2) Corporations Act 2001

571 Corporations Act 2001 (Cth) s 916A.

572 Corporations Act 2001 (Cth) Pt 7.6 div 9.

573 Other associations operating in Australia also include the Independent Financial Advisers' Association of Australia, which promotes independent financial advisers and issues the Gold Standard of Independence to guide consumers to find financial advisers who practice without incentive and without conflicts Independent Financial Advisers Association of Australia, "About," <https://www.ifaaa.com.au/about/>. Other associations relevant to the profession but not described in this report also include the National Insurance Brokers Association and the Finance Brokers Association of Australia.

574 Established in 1992 and has approximately 14,000 members. 11,400 are practising financial planners and 5,700 CFP professionals, see Financial Planning Association of Australia, 2018 Annual Report (2018), https://fpa.com.au/wp-content/uploads/2018/10/FPA_Annual_Report_2018.pdf, p 9.

"About," <https://fpa.com.au/about/>.

575 "About," <https://fpa.com.au/about/>.

The FPA's Code of Professional Practice describes the obligations of FPA members. The Code has three enforceable components: Code of Ethics; Practice Standards; and Rules of Professional Conduct.⁵⁷⁶ The FPA has undertaken a self-regulatory role that has exceeded statutory requirements and focussed on developing best practice standards and principles to advance the professional standing of its members, by implementing standards that go beyond the legal requirement. One main example is the education standards of the FPA that have required more of its members than the minimum education and training requirements found in ASIC's *Regulatory Guide 146*. The FPA also provides certification via the Certified Financial Planner status.⁵⁷⁷ The establishment of FASEA and the forthcoming changes to education and training for the profession will bring the statutory requirements more in line with the standards and expectations of the FPA and its members and the profession.⁵⁷⁸

The Association of Financial Advisors (AFA) is the oldest professional association representing financial advisors in Australia. It is governed by a constitution and by-laws, with the constitution containing comprehensive details of the association's purposes. These include fostering public trust in the profession;

developing and improving standards of quality advice; educating and training its Members to the accepted standards of the profession; establishing and maintaining rules of conduct and a Code of Ethics; promoting ethical practice; exercising oversight over Members, protecting the character, status and interest of the profession; and acting as a co-regulator relevant authorities.⁵⁷⁹ The AFA's By-Laws codify membership categories, educational requirements (including CPD), disciplinary procedures and include the AFA Code of Conduct (Six Principles of Professionalism).⁵⁸⁰

EDUCATION, TRAINING AND ADMISSION

Government Regulation

Education and training under ASIC's *Regulatory Guide 146* sets minimum education and training requirements for financial planners that include a Diploma, but do not require practical training or a minimum number of hours of continuing education.

⁵⁷⁶ Code of Professional Practice, (July 2013), https://fpa.com.au/wp-content/uploads/2015/09/FPA_CodeofPractice_July2013.pdf.

⁵⁷⁷ The FPA is the licensing authority for the CFP in Australia, via agreement with the FPSB.

⁵⁷⁸ Financial Planning Association of Australia, 2018 Annual Report , p 3.

⁵⁷⁹ Section 3 Association of Financial Advisors, Constitution, (11 October 2018), https://5-afa.cdn.aspedia.net/sites/default/files/uploaded-content/field_f_content_file/afa_constitution_-_approved_by_members_-_11_october_2018.pdf.

⁵⁸⁰ By-Laws

(9 November 2017), https://18-afa.cdn.aspedia.net/sites/default/files/uploaded-content/field_f_content_file/updated_approved_by-laws_-_9_november_2017_-_corrections_-_april_2018.pdf.

Following the amendments that take effect from 1 January 2019 the new education, training and ethical standards will require completion of higher education, a professional year of supervised experience and an examination. At the time of writing, training requirements set by ASIC in Regulatory Guide 146 Licensing: Training of financial product advisers apply until the end of 2018. FASEA will determine the education and training requirements and has published approved programs on its website.⁵⁸¹ The minimum bachelor degree requirement will also apply to existing financial advisers.⁵⁸²

Professional Associations

The FPA offers members the Certified Financial Planner (CFP) using the FPSB certification program. The CFP program consists of five units. There are a number of pathways for entry to the program including holding an approved degree, non-related degrees combined with a Financial Planning Diploma.⁵⁸³ The FPA's policy on CPD "aims to encourage genuine professional growth, providing members with the opportunity to seek out a broader range of educational activities and experiences appropriate to their professional development".⁵⁸⁴ CFP Professionals are required to undertake 120 hours per triennium, holder of Associate and Financial Planner membership must complete 90 hours each triennium, for

both membership categories a minimum of three hours must cover ethics.⁵⁸⁵ The FPA offers CPD courses and an accreditation service for professional development activities.⁵⁸⁶

AFA members must meet education requirements of either a degree or a post-graduate degree in a Relevant Discipline, a diploma or higher in a Relevant Discipline.⁵⁸⁷

The AFA requires 30 hours of CPD each year; compliance may be audited by the AFA.⁵⁸⁸

The AFA also offers members educational courses that lead to recognised certifications in three areas: FChFP (Fellow Chartered Financial Practitioner); ChLP (Chartered Life Practitioner); and AChFP (Associate Chartered Financial Practitioner).

ETHICS

Government Regulation

FASEA's Code of Ethics requires 'relevant providers' to promote the values of Trust, Competence, Honesty, Fairness and Diligence. The Code describes 12 standards of ethical behaviour, client care, quality process and professional commitment.

581 Financial Adviser Standards and Ethics Authority, FASEA Approved Programs & Providers, (2018), https://www.fasea.gov.au/wp-content/uploads/2018/11/FAS_20181109_Approved-Programs-FINAL.pdf.

582 Existing financial advisers have until 1 January 2024 to meet the education requirement.

583 Pathways include an approved degree, an Australian financial degree with a Diploma of Financial Planning, a non-related or international degree with an Advanced Diploma of Financial Planning, an Advanced Diploma

584 Financial Planning Association of Australia, "Continuing Professional Education," <https://fpa.com.au/education/continuing-professional-development/>.

585 "FPA Continuing Professional Development Policy," https://fpa.com.au/wp-content/uploads/2016/06/2016_05_18-CPD-Policy-2016_5-FINAL.pdf.

586 "Continuing Professional Education".

587 Association of Financial Advisers, Afa Professional Designations Admissions Guide.

588 The AFA also requires members to meet applicable Tax Practitioner Board CPD requirements.

The Standards require financial advisors (relevant providers) to adhere to laws and the code; to act with integrity and in the best interests of clients; ensure free and informed consent; maintain complete and accurate record keeping; uphold the principle of good faith principle; ensure that actions do not mislead or deceive; develop and maintain knowledge and skills of a high level; cooperate with ASIC; and promote and uphold the ethical standards of the profession.⁵⁸⁹ Advisers will be monitored by an ASIC approved code monitoring body.⁵⁹⁰

Professional Associations

The FPA sets and maintains standards under the association's *Code of Professional Practice*, which includes a Code of Ethics. FPA practitioner members are bound by the Code of Professional Practice. The principles of the FPA Code of Ethics include client first, integrity, objectivity, fairness, professionalism, competence, confidentiality, diligence.⁵⁹¹

The AFA's Code of Conduct sets out the minimum professional practice and ethical standards required of its members.⁵⁹² The Code's objectives are "the achievement of good consumer outcomes and fostering and

enhancing the professional reputation of financial advisers".⁵⁹³ The Code's six principles are: integrity and professional conduct; best interests; conflicts of interest; informed client consent; service standards; and professional expertise.

DISCIPLINE

Government Regulation

Providers of financial services to retail clients are required to have internal dispute resolution (IDR) processes to resolve complaints requirements made or approved by ASIC. The IDR processes must be disclosed in the Financial Services Guide (FSG) or Product Disclosure Statement (PDS) provided to consumers. In circumstances where complaints are not resolved with the financial service provider, a complaint may be made to the Australian Financial Complaints Authority (AFCA).⁵⁹⁴ The AFCA oversees the dispute resolution scheme for financial services the *Corporations Act*. It is independent and deals with consumer and small business complaints about financial services providers.⁵⁹⁵ The *Corporations Act* gives ASIC powers to oversee AFCA.⁵⁹⁶

589 Financial Adviser Standards and Ethics Authority, FASEA Standards Summary.

590 Ibid.

591 {Financial Planning Association of Australia, July 2013 #208}

592 Association of Financial Advisers, By-Laws

593 Schedule ibid.

594 Australian Securities and Investments Commission, "Regulatory Guide 165 Licensing: Internal and External Dispute Resolution," (31 May 2018).

595 Australian Financial Complaints Authority, "About AFCA," <https://www.afca.org.au/about-afca/>. The AFCA replaces the Financial Ombudsman Service, the Credit and Investments Ombudsman and the Superannuation Complaints Tribunal. The AFCA scheme external dispute resolution is established by the Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018 (Cth).

596 Australian Securities and Investments Commission, Regulatory Guide 267 Oversight of the Australian Financial Complaints Authority (June 2018).

Professional Associations

The FPA's disciplinary structure has a formal process, 'Disciplinary Regulation', which describes the dispute resolution processes, and an accountability team, which has investigating officers who handle complaints and make recommendations to a Conduct Review Commission (CRC), an independent board that conducts hearings and makes determinations.⁵⁹⁷ The CRC of the FPA regulates member conduct as part of the association's disciplinary process that operates to uphold the FPA Code of Professional Practice and Code of Ethics. The CRC determines whether disciplinary proceedings should commence, hears and determines complaints, and hear appeals.⁵⁹⁸

The AFA has powers of investigation to ensure members comply with the Act, the Constitution, the By-Laws and the Regulations or such other standards of conduct set down by the AFA or under law.⁵⁹⁹ Disciplinary matters may be resolved by the AFA Board⁶⁰⁰, or investigated and referred to a disciplinary committee. Sanctions that may be imposed by the committee include membership termination, suspension or reprimand.⁶⁰¹

UK (ENGLAND) FINANCIAL PLANNERS

REGULATORY STRUCTURE

Government Regulation

The *Financial Services and Markets Act 2000* (FSMA) provides the legislative framework in the UK for the banking, financial services and insurance industries. The FSMA created two regulators Prudential Regulation Authority (PRA)⁶⁰² and the Financial Conduct Authority (FCA).

The FCA's core jurisdiction arises from the FSMA that states certain activities require authorisation from the regulator.⁶⁰³ These activities are set out in FSMA and, in more detail, in the Regulated Activities Order (RAO). The conditions set by the FCA for authorisation must be met and firms must comply with the rules regulating their conduct. The FCA's objective is to ensure the effective functioning of financial markets via the achievement of three operational objectives: consumer protection, enhanced integrity of the financial system, and the promotion of competition in consumers' interests.⁶⁰⁴

597 Financial Planning Association of Australia, FPA Disciplinary Regulation 2016 (2016), https://fpa.com.au/wp-content/uploads/2016/11/2016_09_28_Disciplinary-Regulation-2016.pdf. ASIC approves changes to the AFCA scheme under the Corporations Act, 2001. ASIC approved AFCA's Rules on 6 September 2018.

598 "Conduct Review Commission," <https://fpa.com.au/professionalism/conduct-review-commission/>.

599 Sections 44-48 Powers of Investigation Association of Financial Advisers, By-Laws

600 Sections 44-48 Powers of Investigation Association of Financial Advisers, By-Laws

601 For matters concerning conviction under law, revocation or suspension of a financial services licence as a representative of a licensee or financial adviser.

602 Sections 49-61 Disciplinary Procedures Association of Financial Advisers, By-Laws

603 The PRA is the prudential regulator of banks, building societies, credit unions, insurers and major investment firms. Macro-regulation of the banking and financial services fields is the responsibility of Bank of England as part of its risk mitigate strategy for the broader financial system.

604 Section 19 Financial Services and Markets Act 2000.

605 Financial Conduct Authority, Our Mission 2017: How We Regulate Financial Services, (2017), <https://www.fca.org.uk/publication/corporate/our-mission-2017.pdf>, Section 1B-E Financial Services and Markets Act 2000.

FCA regulation is designed to serve the public interest, through improved financial markets and better conduct of business by firm's carrying out regulated activities.⁶⁰⁵

The FCA regulates financial services (regulated activities) that are carried out by 'authorised persons' (including investment firms) or persons acting as appointed representatives.⁶⁰⁶ This is a direct regulatory approach that oversees individuals and firms who carry out business related to financial services. Most advisers, who deal with consumers will need to be approved⁶⁰⁷ before they can carry out 'controlled functions' for an authorised firm.

The FCA also incorporates a form of meta-regulation through its accreditation process for professional associations that provide Statements of Professional Standing (SPS) for financial advisers that must be provided to the FCA. In addition to the framework of the FSMA, the FCA publishes detailed rules and guidance legal and regulatory obligations of regulated firms in its Handbook. FCA Handbook contains all FCA legal instruments, which regulated firms must comply with. The combination of statutory control, co-regulation and some

elements of meta-regulation form the UK regulatory framework. The broad reaching regulatory powers of the FCA influence the ways professional associations regulate members in a co-regulatory form.

Professional Associations

The FCA accredits bodies for the purpose of providing independent verification statements of professional standing.⁶⁰⁸ The main body representing financial planners is the Chartered Institute for Securities & Investment (CISI).

CISI is a representative body for professionals working in securities, investment, wealth and financial planning. Its objectives include the advancement of knowledge in the field of securities and investments, the development of high ethical standards, to act as an authoritative body concerning investment in securities.⁶⁰⁹ CISI is a member of the FPSB and awards the Certified Financial Planner (CFP) designation to members who meet the requirements set by the FPSB. Members of CISI undertake on their admission to abide by the association's Charter, Bye-Laws and Regulations, and Code of Conduct.

605 Ibid.

606 Section 1 H Financial Services and Markets Act 2000.

607 Meet regulatory requirements, 'fit and proper' test and comply with the Statements of Principle and Code of Practice.

608 Financial Conduct Authority, "Accredited Body," (2018). CFA Society of the UK; The Chartered Insurance Institute; The Chartered Institute for Securities and Investment; The Chartered Institute of Bankers in Scotland; The London Institute of Banking & Finance; The Pensions Management Institute.

609 Chartered Institute for Securities and Investment (2018) "About Us" <https://www.cisi.org/cisiweb2/cisi-website/about-us>

EDUCATION, TRAINING AND ADMISSION

Government Regulation

The FCA sets education standards and outlines the qualifications required to meet these. Specific activities ('controlled functions') and the qualifications required for each are contained in the FCA Handbook.⁶¹⁰ To be authorised as an 'approved person' to carry out the activities the FCA's 'fit and proper' test must be met, an appropriate qualification must be held,⁶¹¹ the ethical requirements as described in the APER professional standards met,⁶¹² and an annual declaration made to an accredited body. The FCA prescribes 35 hours CPD to be complete annually of which 21 hours should be structured.⁶¹³

Statements of Professional Standing (SPS) must be held on an annual basis as evidence of standards being met. Accredited bodies determine whether the professional standards. The FCA requires that firms ensure that training and competence requirements for qualifications, CPD and ethical behaviour are met.⁶¹⁴

Professional Associations

The CISI is the licensing authority in the UK for the globally recognised Certified Financial Planner designation.⁶¹⁵ The certification process to attain the CFP designation sets education, examination, experience and ethics requirements that meets the standards set by the FPSB. At the CISI this is the Investment Advice Diploma (Financial Planning & Advice examination). The attainment of CFP certification requires successful completion of CISI's Financial Planning & Advice examination, satisfying the relevant work experience standards⁶¹⁶, and agreement to abide by the CISI's Code of Conduct.

As an FCA accredited body, CISI accepts applications from its members for the SPS.⁶¹⁷

CISI members must undertake CPD in line with FCA's requirements. Chartered Members and SPS holders must meet the 35 hour annual minimum (21 structured), 3.5 of the hours each year must be on regulation, risk and integrity and ethics (structured or unstructured).⁶¹⁸

610 Financial Conduct Authority, "TC App 4.1 Appropriate Qualification Tables," <https://www.handbook.fca.org.uk/handbook/TC/App/4/?view=chapter>.

611 Authorised firms need to determine whether a person's competency level satisfied the FCA requirements.

612 APER Statements of Principle and Code of Practice for Approved Persons Financial Conduct Authority, FCA Handbook, <https://www.handbook.fca.org.uk/handbook/APER/>.

613 "Professional Standards: Advisers," <https://www.fca.org.uk/firms/professional-standards-advisers>.

614 Ibid.

615 Following a merger with the Institute of Financial Planning.

616 One year supervised experience or a minimum of three years of unsupervised practice experience.

617 Chartered Institute for Securities & Investment, "Statement of Professional Standing," <https://www.cisi.org/cisiweb2/cisi-website/join-us/sps/apply-for-a-statement-of-professional-standing>.

618 Other members of CISI must undertake 10 hours, 6 structures (1 on ethics).

ETHICS

Government Regulation

The FCA Handbook contains principles that apply to all regulated and authorised firms. APER professional standards describes the ethical expectations placed on advisers.⁶¹⁹

The Statements of Principle require an approved person when carrying out accountable functions, to act with integrity, and with due skill, care and diligence. The proper standards of market conduct in need to be observed and the approved person must cooperate with regulatory bodies. In circumstance where an approved person performs higher management functions due skill, care and diligence must be performed and ensure that the business complies with the relevant requirements and standards of the regulatory system.⁶²⁰

Part of meeting the professional standards is the requirement placed on an approved person to make an annual declaration to accredited body that the standards have been met and obtain an SPS from that accredited body.

Professional Associations

The CISI places an expectation on its members requiring them to adhere to rules of the association and the duties prescribed in law and regulations. In addition the CISI requires its member to support the underlying values of the Institute.⁶²¹ The CISI's Integrity and Ethics Committee implements the institute's Integrity and Ethics strategy.⁶²² The CISI Code of Conduct describes CISI's eight Principles, which include: a requirement to act honestly and fairly, to act with integrity, to observe applicable law, regulations and professional conduct standards, to observe the standards of market integrity, good practice, conduct and confidentiality, to manage conflict of interest, to act only if competent to do so, and to act with the highest personal and professional standards at all times.⁶²³ The CISI also requires members and applicants to pass 'IntegrityMatters' program and to undertake annual integrity and ethics CPD.

619 Financial Conduct Authority, FCA Handbook.

620 APER 2.1A.3 *ibid*.

621 Chartered Institute for Securities & Investment, Code of Conduct, <https://www.cisi.org/cisiweb2/docs/default-source/cisi-website/ethics/code-of-conduct-16.pdf?sfvrsn=2>.

622 B7.3 Royal Charter, (9 October 2009), <https://www.cisi.org/cisiweb2/docs/default-source/cisi-website/membership/royalcharter.pdf?sfvrsn=2>.

623 Code of Conduct.

DISCIPLINE

Government Regulation

The FCA requires that regulated financial firms establish procedures for resolving disputes and must provide a written response to complaints within eight weeks of receiving a complaint. In the event that disputes are not dealt with to the satisfaction of the consumer, the Financial Ombudsman Service deals complaints about those regulated by the FCA to provide retail financial services or credit-related activities.⁶²⁴ The rules that set the complaint handling procedures are published as part of the FCA's Handbook. The Financial Services Register is a public record of firms and individuals that are, regulated, authorised or registered the FCA or is exempt.⁶²⁵

FSMA established the Financial Services Compensation Scheme (FSCS), for redress to customers of authorised financial services firms if a firm is unable, or likely to be unable, to pay claims against it. The rationale behind the FSCS is the provision of a trusted compensation service for consumers, which raises public confidence in the financial services industry.⁶²⁶

The rules of the schemes are contained in the FCA Handbook.

Professional Associations

Meeting the requirements set by the FCA to establish a disciplinary process for members CISI's Bye-laws establish a Disciplinary Committee responsible for oversight and delivery of the Institute's disciplinary processes.⁶²⁷ The CISI performs compliance monitoring, and investigates complaints, allegations or suspicions of failure to comply with Bye-Laws, the Regulations and the Code of Conduct.⁶²⁸ Disciplinary action may result from a failure to adhere to Bye-Laws, Regulations or the Code of Conduct Bylaw, from conduct liable to bring the Institute into disrepute; or from a member having been convicted of a criminal offence.⁶²⁹ Sanctions include reprimand the Member; require undertakings as to future conduct; fine; impose membership conditions; suspension; or expulsion.⁶³⁰

624 Part XVI and Schedule 17 of the Financial Services and Markets Act 2000.

625 Also those regulated by the PRA.

626 Financial Services Compensation Scheme (2018) "About FSCS" <https://www.fscs.org.uk/about-fscs/>.

627 B7.6 Chartered Institute for Securities & Investment, Royal Charter.

628 628 B5.3.1 Ibid.

629 B5.2.2 Chartered Institute for Securities & Investment, Royal Charter.

630 B5.3.3 *ibid*.

US (NY STATE) FINANCIAL PLANNERS

REGULATORY STRUCTURE

Government Regulation

Financial planners in the United States are not regulated as a distinct profession. At the time of writing there are no government regulations requiring ‘financial planners’ to meet established standards of education, competency, and ethics to practice. Some aspects of financial planning are regulated, such as investment advice, securities trading, and insurance, and we describe some of the ways in which this is carried out. For example, regulatory oversight of investment advisers occurs at the federal level by the Securities and Exchange Commission (SEC) or at the state level depending upon the size of asset management. The form of professional regulation takes the form of co-regulation with financial planners subject to Federal and state investment adviser regulations and laws depending upon the service provided, combined with self-regulatory organisations and professional associations that offer credentialing, subject to meeting stated requirements.⁶³¹

Financial advisers are required to provide services to their customers under the fiduciary standard.⁶³² There is a combination of state and federal oversight of investment advisers, based on registration requirements, together with SROs. Investment advisers managing more than \$100 million in assets register with the SEC. Advisers with less than that amount register with state security regulators.⁶³³ The New York State Office of the Attorney General oversees the licensing of investment advisers, education requirements and examinations, and will investigate consumer complaints.

The North American Securities Administrators Association (NASAA) is a self-regulatory organization comprised of state and provincial securities regulators for the purpose of advocating and acting for the protection of investors. NASAA collaborates with regulatory counterparts to protect investors and has a number of committees, including investment adviser regulation, and enforcement.

The Financial Industry Regulatory Authority, Inc. (FINRA) is an independent self-regulatory organization, which supervises firms that publically deal in securities, for the purpose of protecting investors and promoting market integrity.

631 For the purpose of this report we will consider the role of the CFP Board.

632 Securities and Exchange Commission, "Information for Newly Admitted Investment Advisers," <https://www.sec.gov/divisions/investment/ad-voverview.htm>.

633 Investment Advisers Act of 1940.

All sellers of securities to the public are required to be licensed and registered by FINRA. All FINRA members are subject to the FINRA by-Laws and obliged to adhere to reporting requirements. FINRA oversees the licensing of registered investment advisers, broker-dealers. FINRA regulates securities exchanges like NYSE, NASDAQ, the International Securities Exchange, and the American Stock Exchange (on a contractual basis).

New York State's Investor Protection Bureau enforces the securities law under the Office of the Attorney General.⁶³⁴

Professional Associations

The Certified Financial Planner Board of Standards (CFP Board) promotes "the value of professional, competent and ethical financial planning services". It grants the CFP certification to professionals who meet the certification requirements as they relate to education, examination, experience, ethics and ongoing certification requirements. It is a certification and standards-setting organisation and within the USA has exclusive authority to determine who may use the CFP designation. Through this process the CFP Board is a main standard setter for the financial planning profession in the USA. CFP Board requires financial planners to abide by its definition of the fiduciary standard, and further expects holders of CFP to adhere to its *Standards of Professional Conduct*,

Code of Ethics and Professional Responsibility, Rules of Conduct, Practice Standards and the *Disciplinary Rules* under which the CFP Board carries out disciplinary oversight.⁶³⁵

The FPA is the largest membership organization for CFP professionals in the U.S. It requires members to adhere to high standards of professional competence and its ethical code. FPA offers pathways for professionals to achieve certification under the CFP designation.

National Association of Personal Financial Advisors (NAPFA) is the professional association of Fee-Only financial planning professionals. The association has developed standards of practice, requires members to adhere to its Code of Ethics⁶³⁶ and has a Fiduciary Oath that must be signed annually.⁶³⁷ Principle of the associations are based on independent financial advice delivered in the public interest, and the maintenance of high professional standards.

The three professional associations described above coordinate their advocacy and policy inputs through the Financial Planning Coalition to advance financial planning profession and increase consumer and investor protection.

634 New York State Office of the Attorney General, "Investor Protection Bureau,"

635 Certified Financial Planner Board of Standards, Standards of Professional Conduct, <https://www.cfp.net/for-cfp-professionals/professional-standards-enforcement/current-standards-of-professional-conduct/standards-of-professional-conduct>.

636 Objectivity, Confidentiality, Competence, Fairness & Suitability, Integrity & Honesty, Regulatory Compliance, Full Disclosure, and Professionalism National Association of Personal Financial Advisors, "Mission and Oath."

637 Ibid.

Objectives of the Coalition include maintain fiduciary accountability and transparency in financial planning services, promoting appropriate regulation to identify professionals who professional qualification standards like those of the CFP certification standard, and that such certified professions are easily identifiable.⁶³⁸

EDUCATION, TRAINING AND ADMISSION

Government Regulation

FINRA works in conjunction with the SEC and the NASAA to maintain a database on financial professionals, the Investment Adviser Registration Depository (IARD). Both state (under the New York Investor Protection Bureau and federally (SEC) registered financial advisers use this process. It oversees the continuing education of the professionals it regulates in conjunction with firms administration,⁶³⁹ and administers exams such as the NASAA Uniform Securities Agent State Law Examination.

Professional Associations

The National Commission for Certifying Agencies (NCCA) accredits the CFP Board's CFP certification as meeting its process and product standards. The qualification and educational

requirements of the CFP include bachelor's degree (or higher) from an accredited provider, three years of full-time personal financial planning experience or the equivalent part-time experience, and a CFP-board registered program or holding designations from an approved association.⁶⁴⁰ The annual Continuing Education requirement is 28 hours of accepted financial planning subject matter and 2 hours of approved ethics content.⁶⁴¹

ETHICS

Government Regulation

As described above, a fiduciary standard is placed in law on investment advisers in uphold a client's interest above his/her own. The SEC places duties on financial advisers to avoid conflicts of interest with the interests of any client, to use reasonable care to avoid misleading clients, and to provide full and fair disclosure.⁶⁴²

638 Financial Planning Coalition, "About Us," <http://financialplanningcoalition.com/about/>.

639 FINRA Rule 1240. Continuing Education Requirements and describes the Regulatory and Firm Elements http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=10204

640 Certified Financial Planner Board of Standards, "CFP Certification Requirements."

641 Ibid.

642 Securities and Exchange Commission, "Information for Newly Admitted Investment Advisers". We note also, the Finance Department in New York State has proposed a 'best interest' standard for sellers of life insurance and annuities.

Professional Associations

The CFP designation requires holders to uphold the Code of Ethics principles set by the CFP Board. The principles are integrity, objectivity, competence, fairness, confidentiality, professionalism and diligence. In line with the fiduciary standard above, the Rules of Conduct require CFP holders to act in the best interests of clients.⁶⁴³

DISCIPLINE

Government Regulation

The SEC and the SROs enforce securities laws. The FINRA assesses broad regulatory risks and allegations of inappropriate conduct by investment advisers that it regulates, and has a disciplinary process used to enforce federal securities laws. The monitoring and enforcement processes aim to ensure compliance with the SRO's rules and with the SEC. These actions can result in an investment adviser and representatives being suspended, disqualified from practice, fined or facing criminal or civil proceedings.

In New York State, the Investor Protection Bureau, under the Attorney General's powers, investigates allegations of fraud by those regulated at the state level. Complaints made

to the Investor Protection Bureau are reviewed and investigated. It is within the power of the Attorney General to civil and criminal prosecutions.⁶⁴⁴ Financial Frauds & Consumer Protection Division (FFCPD) under the New York Department of Financial Services (NYDFS) undertakes investigation and enforcement for violations of state financial Services, banking and insurance Laws.⁶⁴⁵

Professional Associations

The CFP Board has a disciplinary process for professional who contravene its ethical and practice standards. The CFP Board has the delegated power to oversee complains and discipline handling for members of the FPA. CFP Board's Disciplinary and Ethics Commission oversee the disciplinary process for all matters related to the *Code of Ethics* and *Rules of Conduct*, the *Practice Standards* and *Fitness Standards*.⁶⁴⁶ Sanctions may result in suspension or revocation of the certification or requirements for additional education.⁶⁴⁷

643 Certified Financial Planner Board of Standards, Standards of Professional Conduct; "CFP Certification Requirements."

644 New York General Business Law article 23-A, the Martin Act.

645 Department of Financial Services, "About Us," https://www.dfs.ny.gov/about/dfs_about.htm.

646 Article 3 Certified Financial Planner Board of Standards, "Disciplinary Rules and Procedures," <https://www.cfp.net/for-cfp-professionals/professional-standards-enforcement/current-standards-of-professional-conduct/standards-of-professional-conduct/disciplinary-rules-procedures>.

647 Ibid.

CANADIAN (ONTARIO) FINANCIAL PLANNERS

REGULATORY STRUCTURE

Government Regulation

The current regulatory framework in Ontario does not regulate individual firms or advisers engaged in Financial Planning or the provision of Financial Advice to consumers in Ontario. In a similar manner to the USA, to protect the investing public those individuals or firms involved in securities trading activities need to register annually with the regulator. In the case of Canada the relevant regulator will be a provincial securities regulator. Recently the Ontario government has moved to review and change regulatory environment and recognise financial planners as a distinct profession, by undertaking a consultative process with stakeholders regarding the restriction of 'Financial Planner' to those individuals holding a recognized financial planning credential.⁶⁴⁸

Under the Canadian constitutional division of power a significant proportion of the activities relating to financial services fall within the remit of provincial governments. Banking services are regulated at the federal level but the regulation of securities, financial products and financial advice is undertaken provincially.

At the federal level the Investment Industry Regulatory Organization of Canada (IIROC) Mutual Fund Dealers Association of Canada (MFDA) are self-regulatory organisations (SROs). The IIROC oversees investment dealers and trading activity on debt and equity marketplaces in Canada. It is responsible for establishing high-quality regulatory and investment industry standards, sets education standards and it protects investors and strengthens market integrity.⁶⁴⁹ Advisors regulated by the IIROC ensure they adhere to consider each client's financial situation, investment needs and objectives, and tolerance for risk. The Mutual Fund Dealers Association of Canada (MFDA) is the national SRO for mutual fund dealers that are licensed with provincial securities commissions.

⁶⁴⁸ Ministry of Finance (Ontario), Regulation of Financial Planners – Consultation Paper, (2018), <https://www.fin.gov.on.ca/en/consultations/fpfa/regulation-of-financial-planners.html>.

⁶⁴⁹ Investment Industry Regulatory Organization of Canada, "About IIROC," <http://www.iiroc.ca/about/Pages/default.aspx>; Investment Industry Regulatory Organisation of Canada, "About IIROC," (2018).

In Ontario, the main regulatory bodies are the Financial Services Commission of Ontario (FSCO) and the Ontario Securities Commission (OSC), and the Registered Insurance Brokers of Ontario (RIBO).

The FSCO has a legislated mandate to regulate investment dealers and protects the public interest in financial services and is accountable to the Minister of Finance.⁶⁵⁰ The OSC administers and enforces compliance the Securities Act (Ontario) and the Commodity Futures Act (Ontario). It monitors firms and individuals to prevent misconduct and maintain the integrity of the markets. The OSC collaborates with the Department of Finance Canada, the Office of the Superintendent of Financial Institutions Canada (OSFI) and the Bank of Canada for the purpose of promoting financial stability. The OSC recognises two SROs as entities established to regulate through standards of practice their members, the IIROC, and the MFDA.⁶⁵¹

The Canadian Securities Administrators (CSA), provides a mechanism for collaboration between the securities regulators of Canada's provinces and territories, enabling a coordinate regulatory framework. As such, its purpose is "to improve, coordinate and harmonize regulation

of the Canadian capital markets" through policy consensus and implementation of regulation.

Professional Associations

The Financial Planning Standards Council (FPSC)⁶⁵² sets financial planning standards in Canada through its certification process for financial planners. As with other jurisdictions, the CFP designation shows that holders meet competency and professionalism standards based on required education, examination, experience and ethics evaluations.⁶⁵³ The FPSC is affiliated with the International Financial Planning Standards Board (FPSB), which develops and operates certification programs for financial planning and licenses them to organisations to administer in their jurisdiction, as described previously. It is accredited by the Standards Council of Canada for meeting internationally recognized standards for certification bodies.⁶⁵⁴

Advocis is a voluntary professional association for financial advisers in Canada. Members are required to adhere to a professional Code of Conduct, maintain the expected standards, participate in continuing education programs, and maintain professional liability insurance.⁶⁵⁵

650 Established under the Financial Services Commission of Ontario Act, 1997 (FSCO Act)

651 Under the Securities Act (Ontario).

652 We note that from April 2019 the FPSC will cease operation and will be replaced by the FP Canada. FP Canada will set the strategic direction for professional financial planning through two avenues, FP Canada Standards Council which will focus on establishing and enforcing financial planning standards and certifying financial planners; and FP Canada Institute focused on professional education and resources. The FP Canada Standards Council will have authority over examinations and certification decisions Financial Planning Standards Council, "Introducing Fp Canada," <http://www.fpssc.ca/about-fpsc/fp-canada-FAQ>.

653 "About Financial Planning Standards Council," <http://www.fpssc.ca/about-fpsc>.

654 ISO 17024

655 Advocis, "About Advocis," (2018).

It offers the CFP designation to members as a member of the Financial Planning Standards Council (FPSC), which requires individuals to complete the examination, experience and ethics requirements.⁶⁵⁶

EDUCATION, TRAINING AND ADMISSION

Government Regulation

Registrable activities can only be performed by individuals with the education, training and experience that would reasonably be expected to perform the activity competently.⁶⁵⁷ Canada requires successful completion of minimum examination requirements prior to registration and licensing as a financial adviser with regard to securities trade. The Canadian Securities Course Exam is widely used to meet the base securities licensing requirements for IIROC and the OSC.⁶⁵⁸ The IIROC has a continuing education requirement certain Approved Persons to ensure proficiency standards are met. The continuing education program operates in two-year cycles and consists of a compliance course, covering ethical issues, and regulatory developments, and a professional development course.⁶⁵⁹

Professional Associations

To obtain the CFP designation under the FPSC scheme, candidates must complete the required education program, examinations, have three years of qualifying work experience and agree to adhere to the *Standards of Professional Responsibility*. Under the standards set by the FPSC 25 hours of Continuing Education must be completed each year to retain the certification.⁶⁶⁰ Advocis offers the CFP designation to members, institute-accredited education programs that are recognized by regulators, and continuing education opportunities through the Advocis Schools. Advocis members with the CFP certification must meet the continuing education requirements of the FPSC.

ETHICS

Professional Associations

Both the FPSC and Advocis set standards for the profession. The FPSC's Standards of Professional Responsibility contains four elements, Code of Ethics, Rules of Conduct, Fitness Standards, and Financial Planning Practice Standards. The Ethical Code principles are Client First, Integrity, Objectivity, Competence, Fairness, Confidentiality, Diligence, and Professionalism.⁶⁶¹

656 It also offers designations for Chartered Life Underwriter and Certified Health Insurance Specialist.

657 Part 3.4 National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations.

658 National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations.

659 IIROC Rule 2650 Continuing Education Requirements for Approved Persons.

660 Financial Planning Standards Council, Fpsc Continuing Education Guidelines, http://www.fpsc.ca/docs/default-source/FPSC/fpsc_continuing_education_guidelines.pdf.

661 "FPSC Code of Ethics," Standards of Professional Responsibility for CFP® Professionals and FPSC Level 1® Certificants in Financial Planning (2017), http://www.fpsc.ca/docs/default-source/FPSC/standards_of_professional_responsibility.pdf.

Members are expected to adhere to the principles in the Advocis Code of Professional Conduct, which are Priority of Client's Interest, Integrity, Competence, Diligence, Disclosure, Professionalism, Confidentiality, and Respect for the Law.⁶⁶²

DISCIPLINE

Government Regulation

Part of the registration process for firms is a system of controls and supervision that promotes compliance by the firm and individuals with securities law.⁶⁶³ The OSC places an obligation on firms to create a culture of compliance by incorporate business best practices into their actions, generating a co-regulatory framework for firms and advisers within them undertaking activities under the regulation of the OSC.⁶⁶⁴ Breaches of Ontario securities law are investigated by the OSC. If the OSC considers there to be a case to answer it will commence proceedings, with a hearing before a panel. The IIROC also investigates misconduct and can initiate disciplinary proceedings which may result in penalties including fines, suspensions and permanent bans or terminations for individuals and firms.

Professional Associations

Both the FPSC and Advocis have self-regulatory disciplinary procedures that apply to members/certified planners. The Disciplinary Rules and Procedures of the FPSC guide the conduct of investigations and proceedings. Grounds for discipline include an act or omission that violates the provisions of the Code, Rules, or Fitness Standards; non-compliance with a discipline order, or failure to cooperate with an FPSC investigation.⁶⁶⁵ Where a CFP professional may have breached a standard the matter is referred to a Disciplinary Hearing Panel. Disciplinary action extends from remedial education to temporary suspension or revocation of the CFP certification. Conduct that is found to breach the Advocis Code of Professional Conduct may result in disciplinary sanctions. Advocis requires formal written notice of a complaint via a Request for Investigation to initiate Advocis' disciplinary procedures that include formal dispute resolution and review by the Ethics Committee.⁶⁶⁶ Disciplinary action is reported publically by the FPSC and Advocis.

662 Advocis, Code of Professional Conduct, <https://www.advocis.ca/pdf/Advocis-CPC.pdf>; "Code of Professional Conduct and Explanatory Notes."

663 Ontario Securities Commission, "Compliance System."

664 "Compliance System," http://www.osc.gov.on.ca/en/Dealers_compliance-system_index.htm.

665 Financial Planning Standards Council, Disciplinary Rules and Procedures, (April 2018), http://www.fpsc.ca/docs/default-source/FPSC/disciplinary_rules_procedures.pdf?sfvrsn=4.

666 Advocis, Advocis/Institute Disciplinary Procedures (2018), <https://www.iafe.ca/pdf/Disciplinary-Procedure-2018.pdf>.

OVERALL ASSESSMENT AND SUMMARY

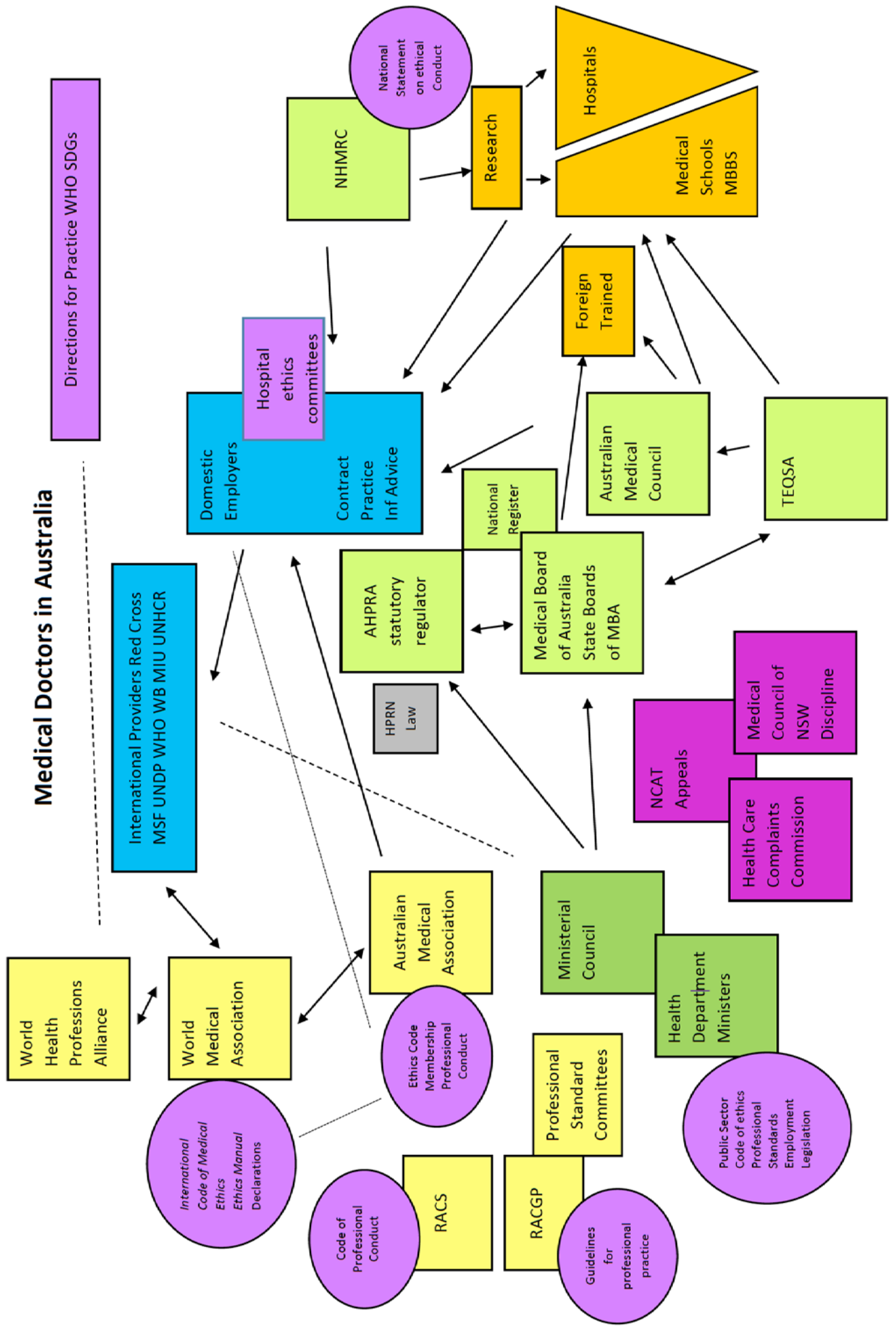
Our research indicates a number of intersecting themes that will impact on the regulation of the professions in the future. Issues to consider are the impact of transnational practice on regulation and how to best regulate individuals and firms that operate in multiple jurisdictions. One of the key questions that arises as we think about professional regulation is who is being regulated? Is it the firm or the individuals? With regard to the legal profession, as firms increase in size and cross national borders issues relating to monopolies of legal service and changes in ownership of law firms⁶⁶⁷ will need to be considered by regulators and governments. Questions arise as to the regulation of lawyers working outside of the legal service field and legal services that are offered by non-lawyers, which fall outside the traditional self-regulatory structures. In the future professional regulation may continue to move from self-regulatory models towards meta-regulation or a combination of self-regulation with some external oversight. The regulation of the accountancy profession shows a modification of regulatory models to respond to and fit into the 'global' accounting arena. Regulation of professional services across the jurisdictions varies from co-regulatory frameworks to forms of

meta-regulation with governments establishing the expectations of practice and professional associations developing the professional conduct, practice and education standards within that framework. Differences are evident in the degree to which command and control type regulation is initiated compared with incentives to encourage improved standards.

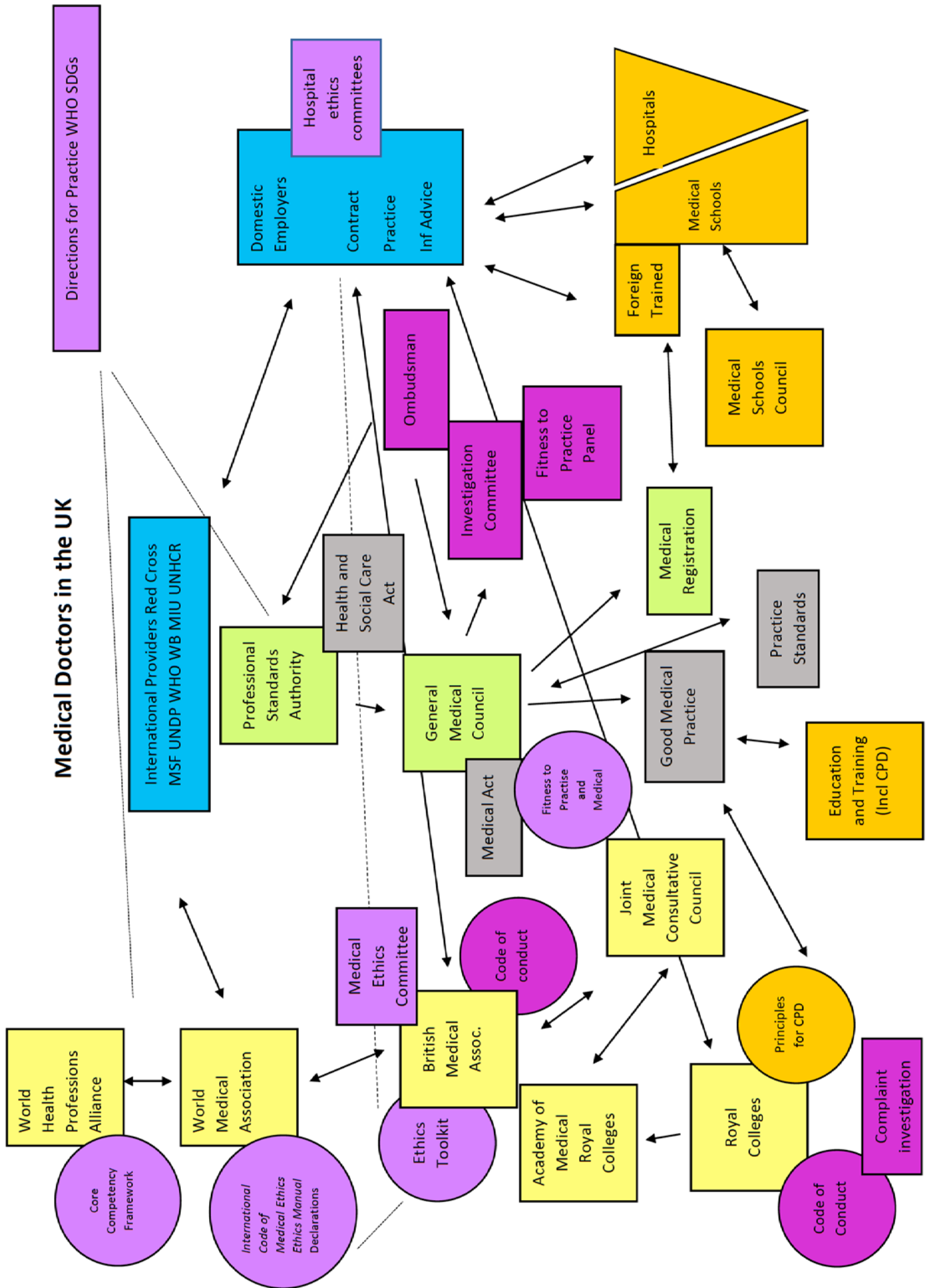
The focus of this report has been on furthering our understanding of comparative approaches to the regulation of selected professions across four different jurisdictions. The limits to the research undertaken have resulted in a report that focusses on understanding and describing the types of regulatory frameworks in operation in the jurisdictions. Areas for further research include, for example, expanding the use of the integrity systems methodology to understand how the regulators, associations and other stakeholders view the current regimes for a more complete understanding of the strengths and weakness of each approach.

667 Noting Australia and the United Kingdom permit ownership by non-lawyers.

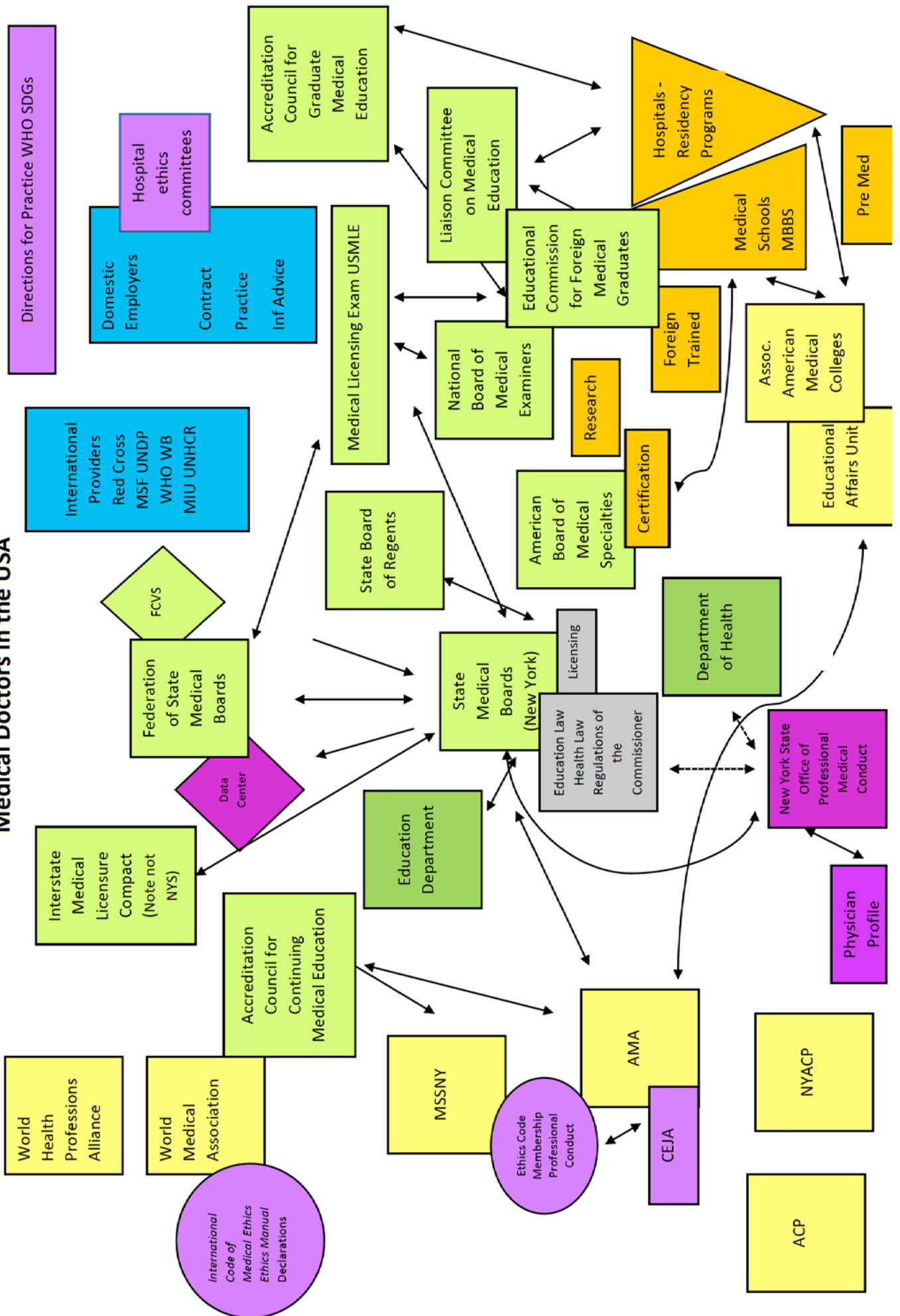
Medical Doctors in Australia



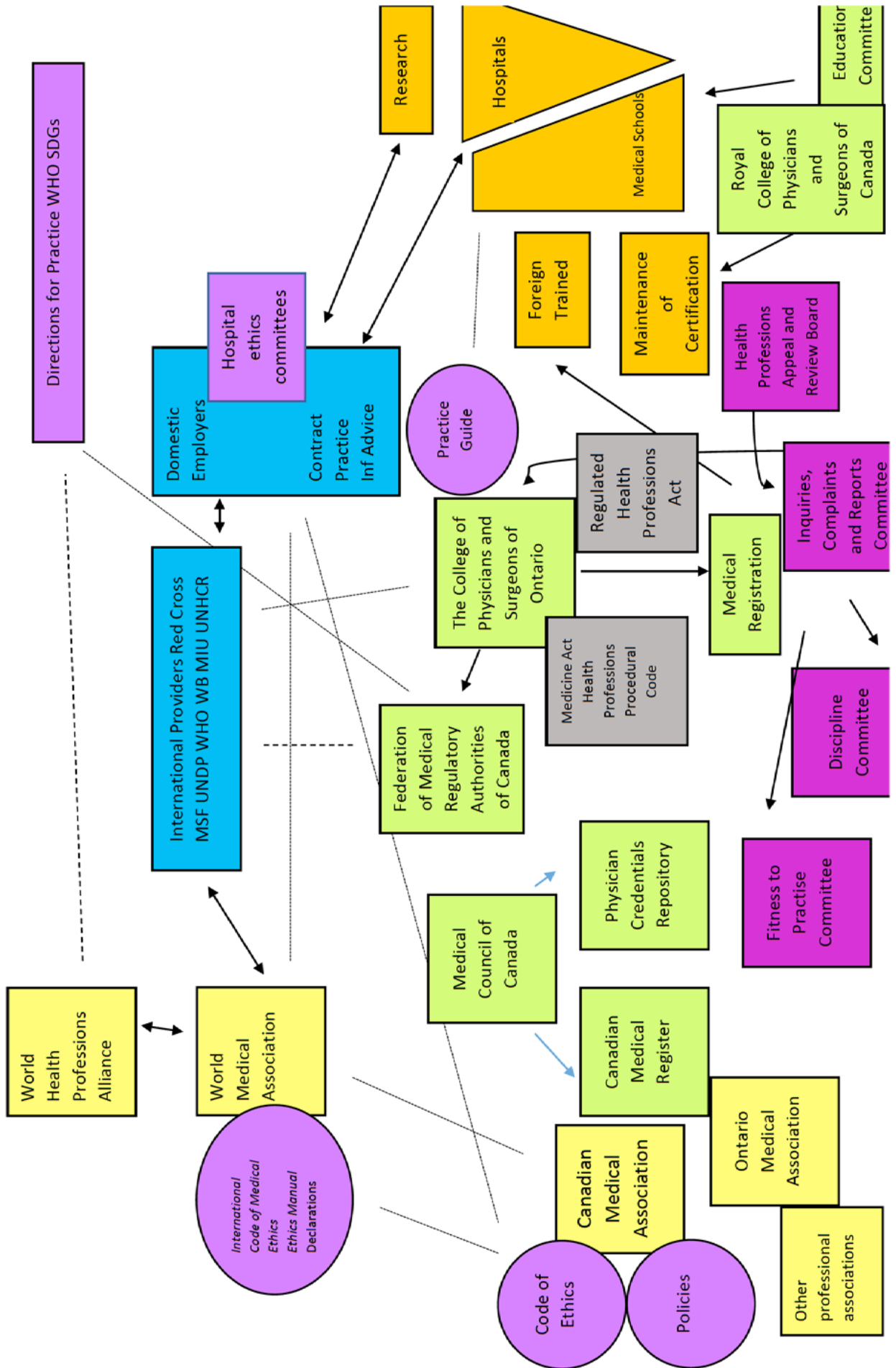
Medical Doctors in the UK



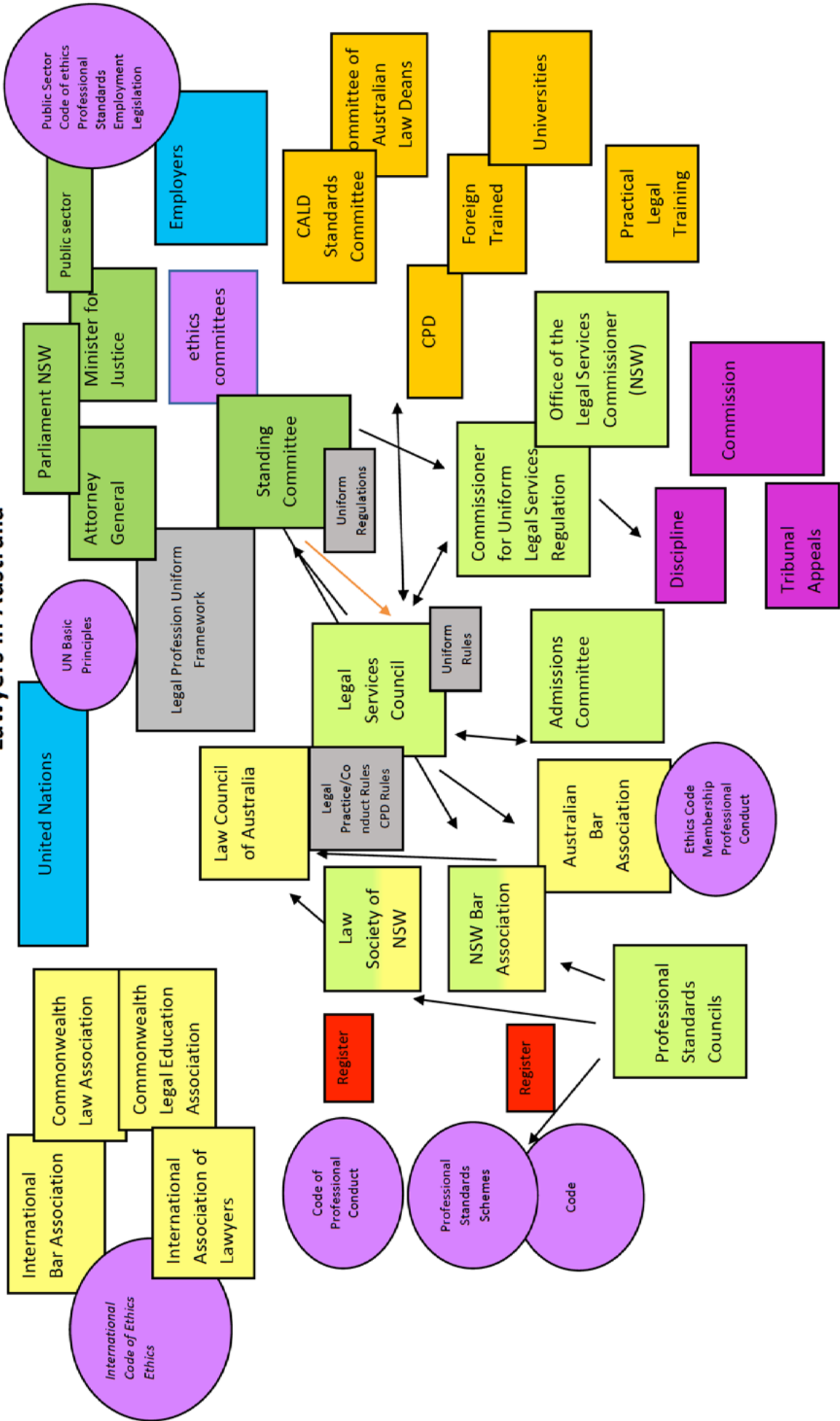
Medical Doctors in the USA



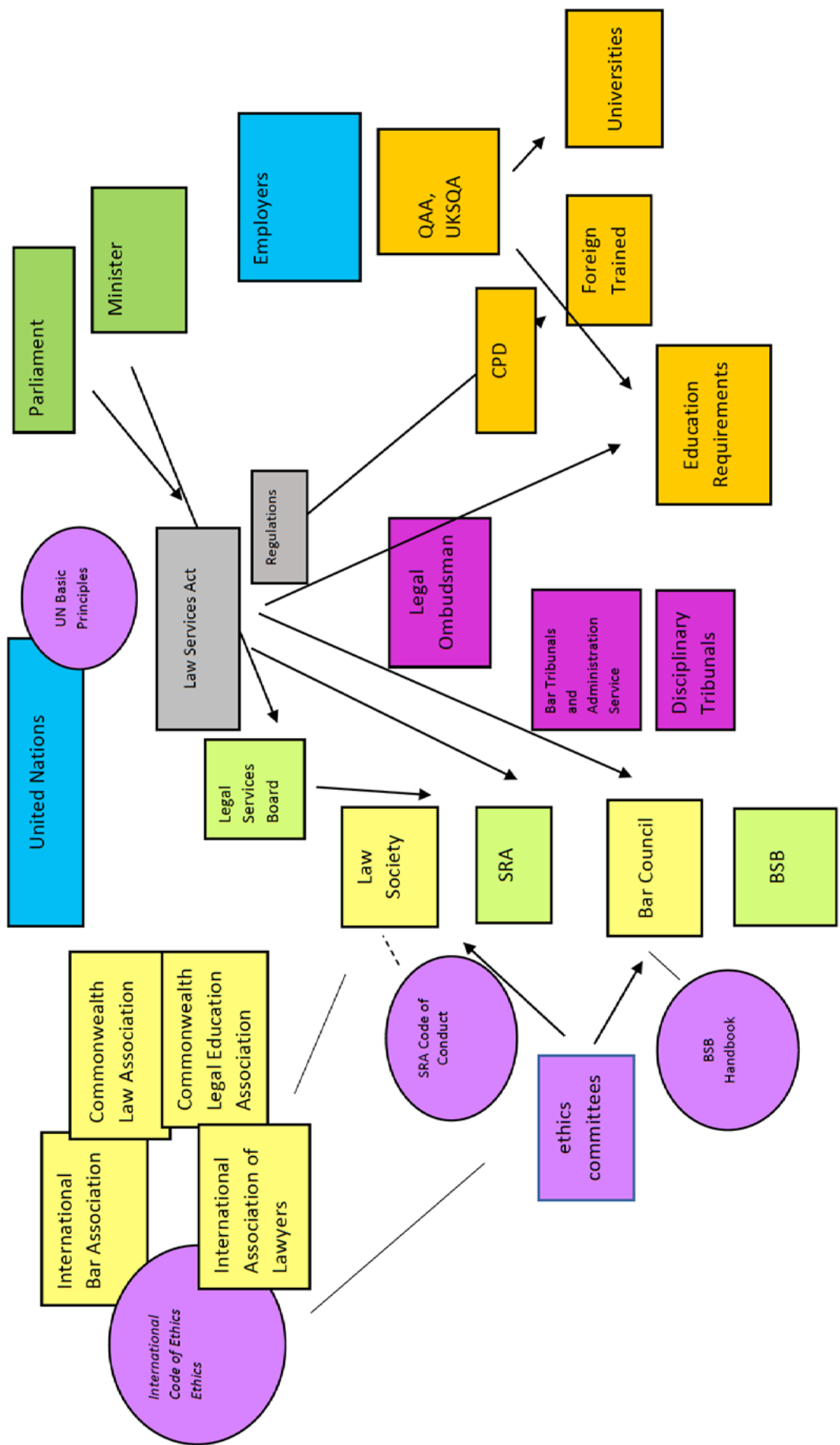
Medical Doctors in Canada



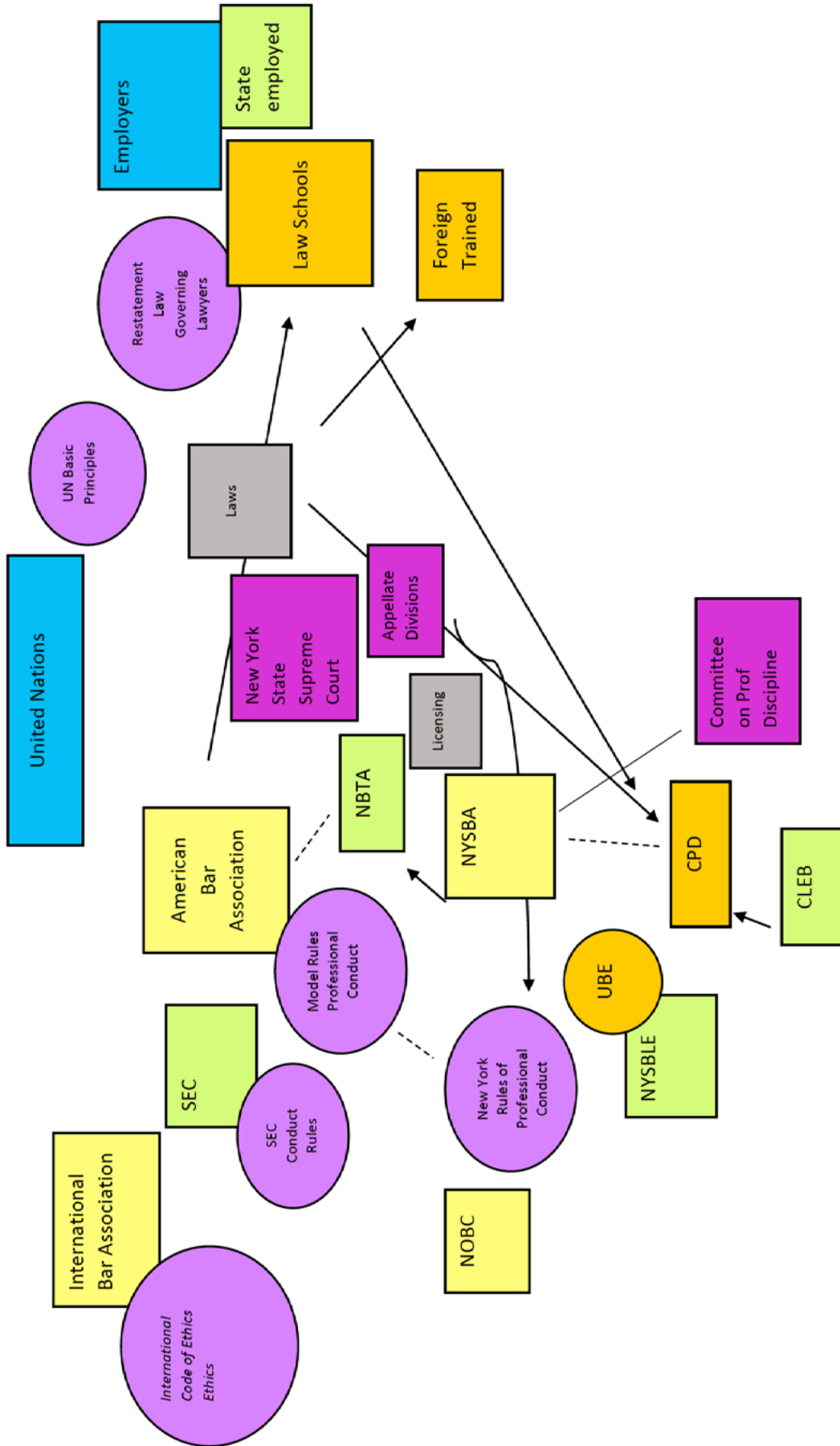
Lawyers in Australia



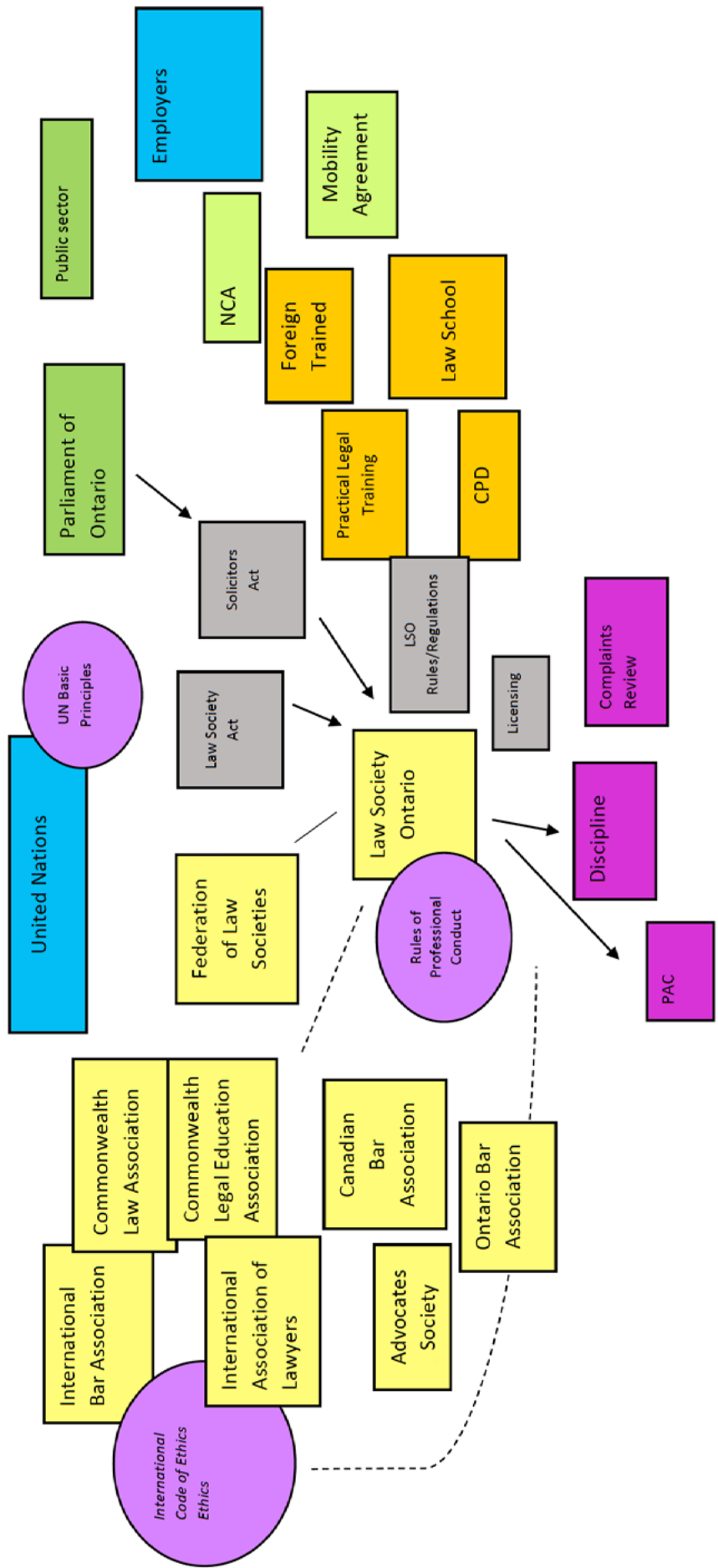
Lawyers in the UK



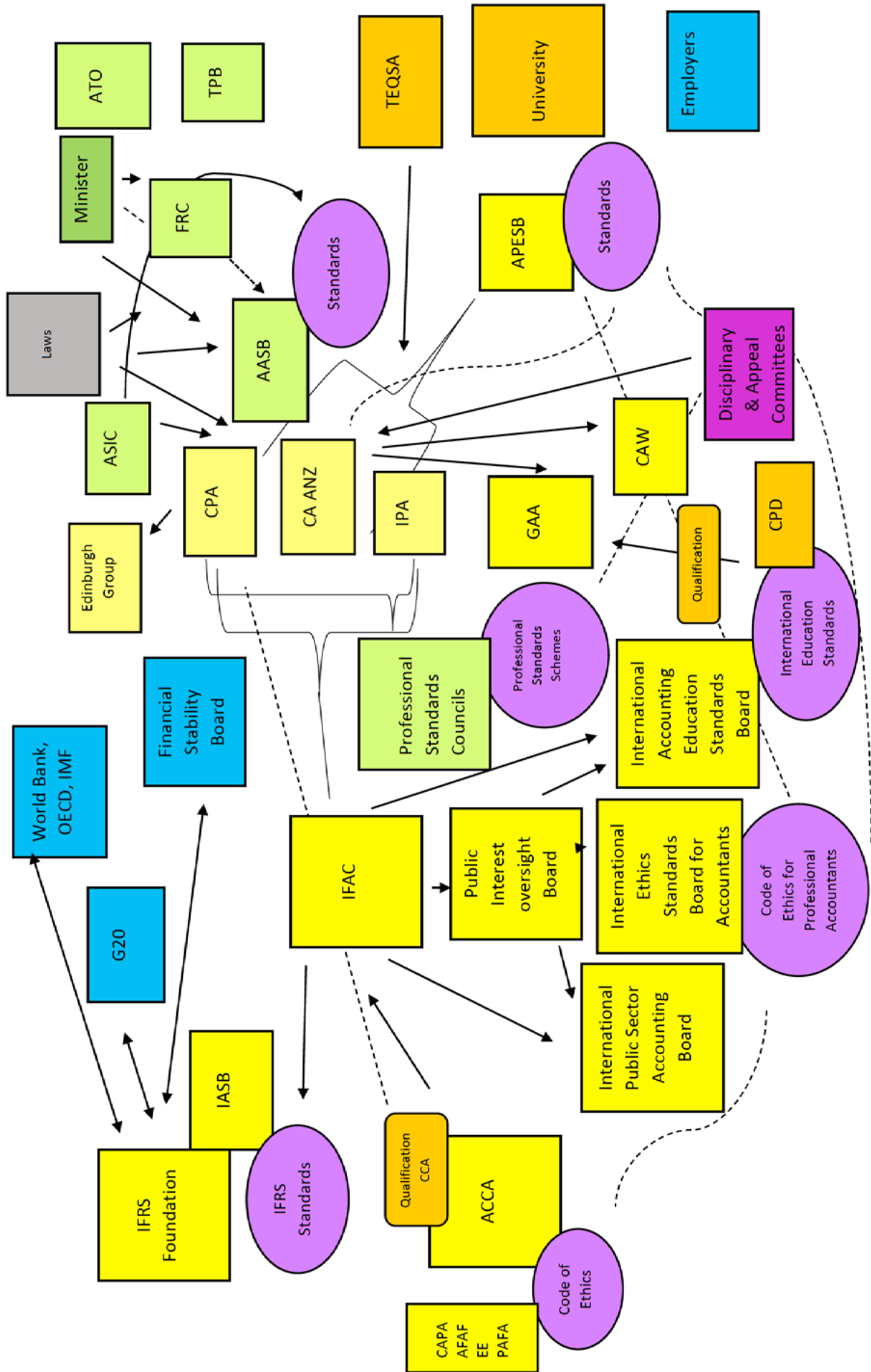
Lawyers in the USA



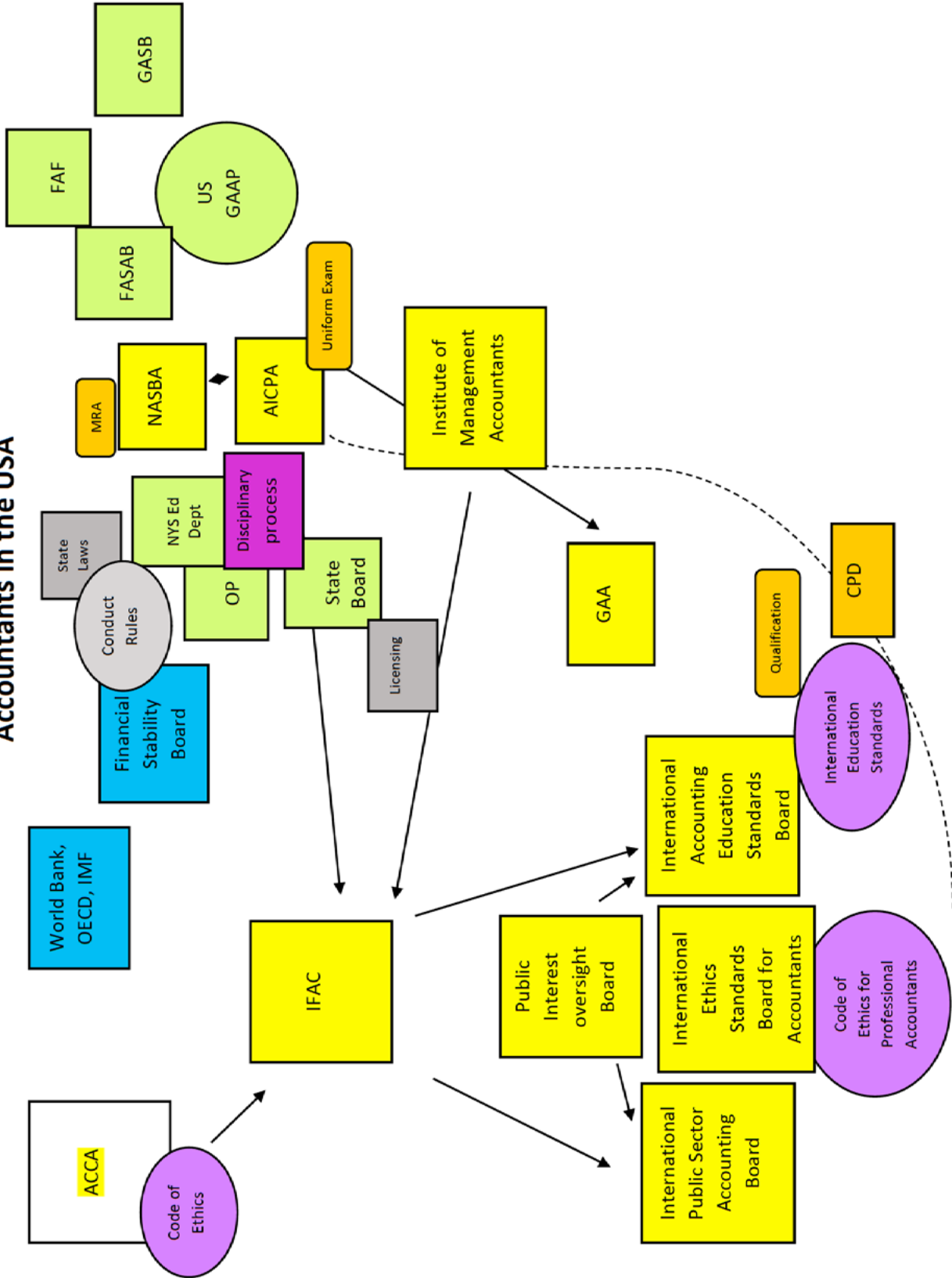
Lawyers in Canada



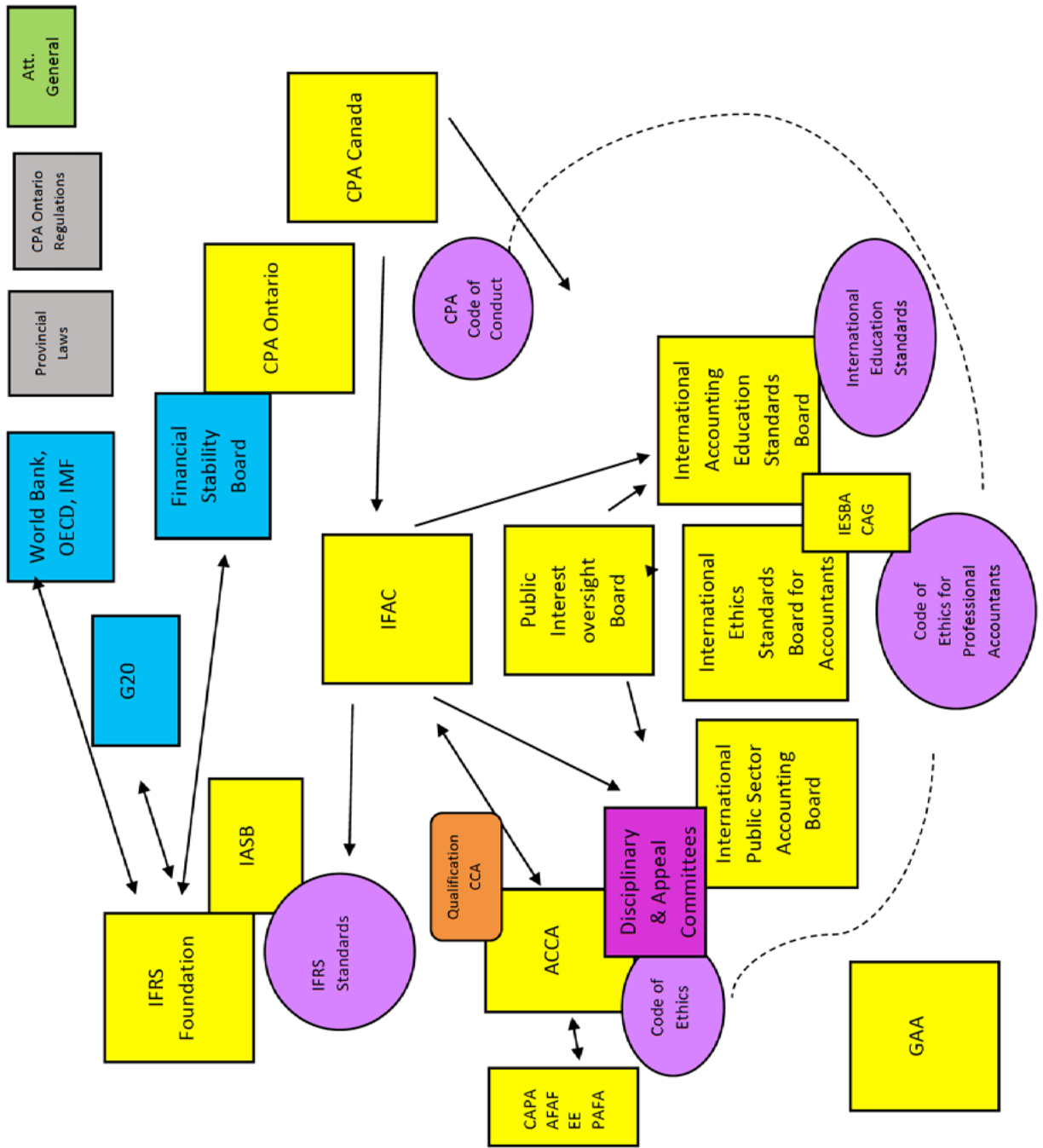
Accountants in the Australia



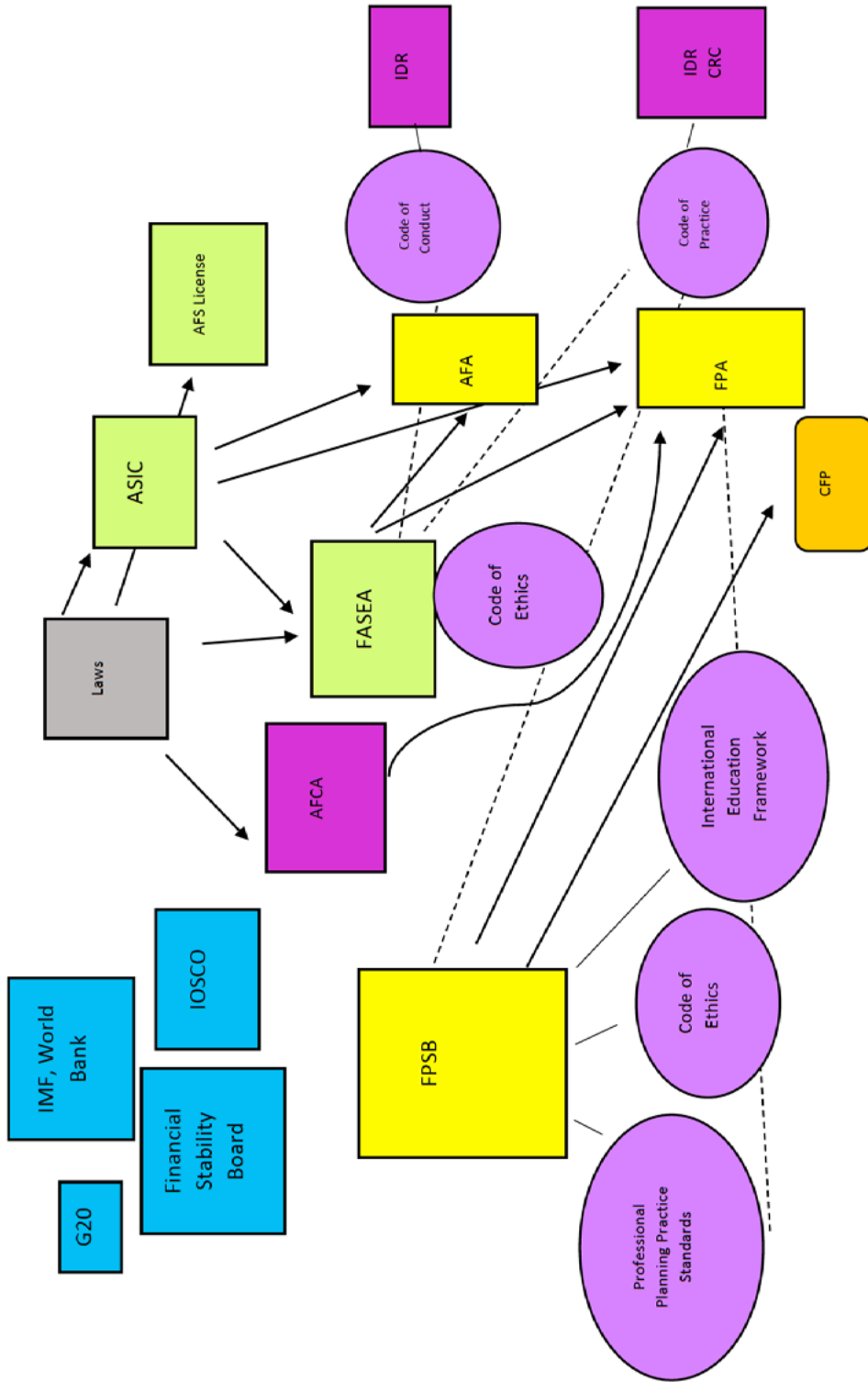
Accountants in the USA



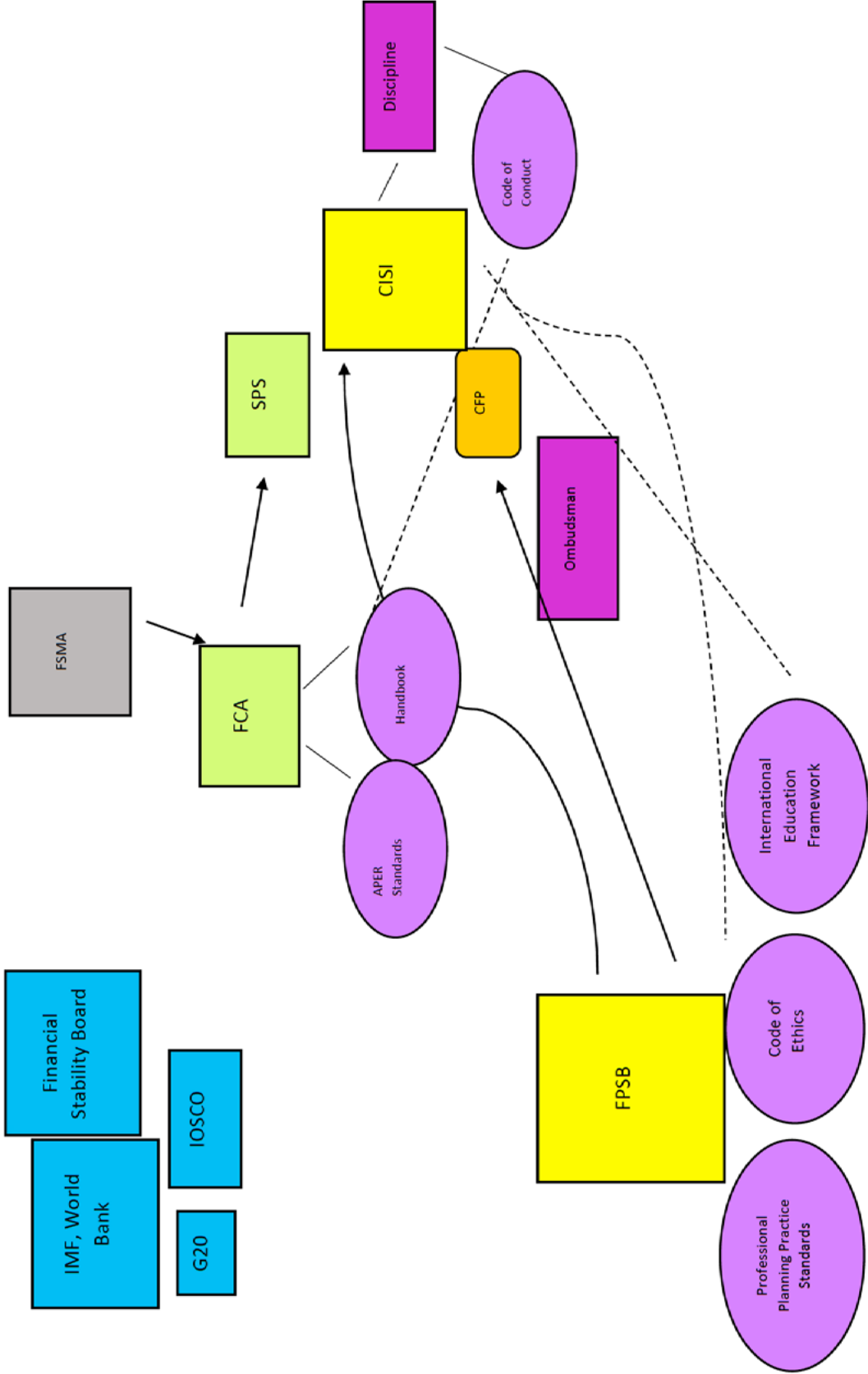
Accountants in Canada



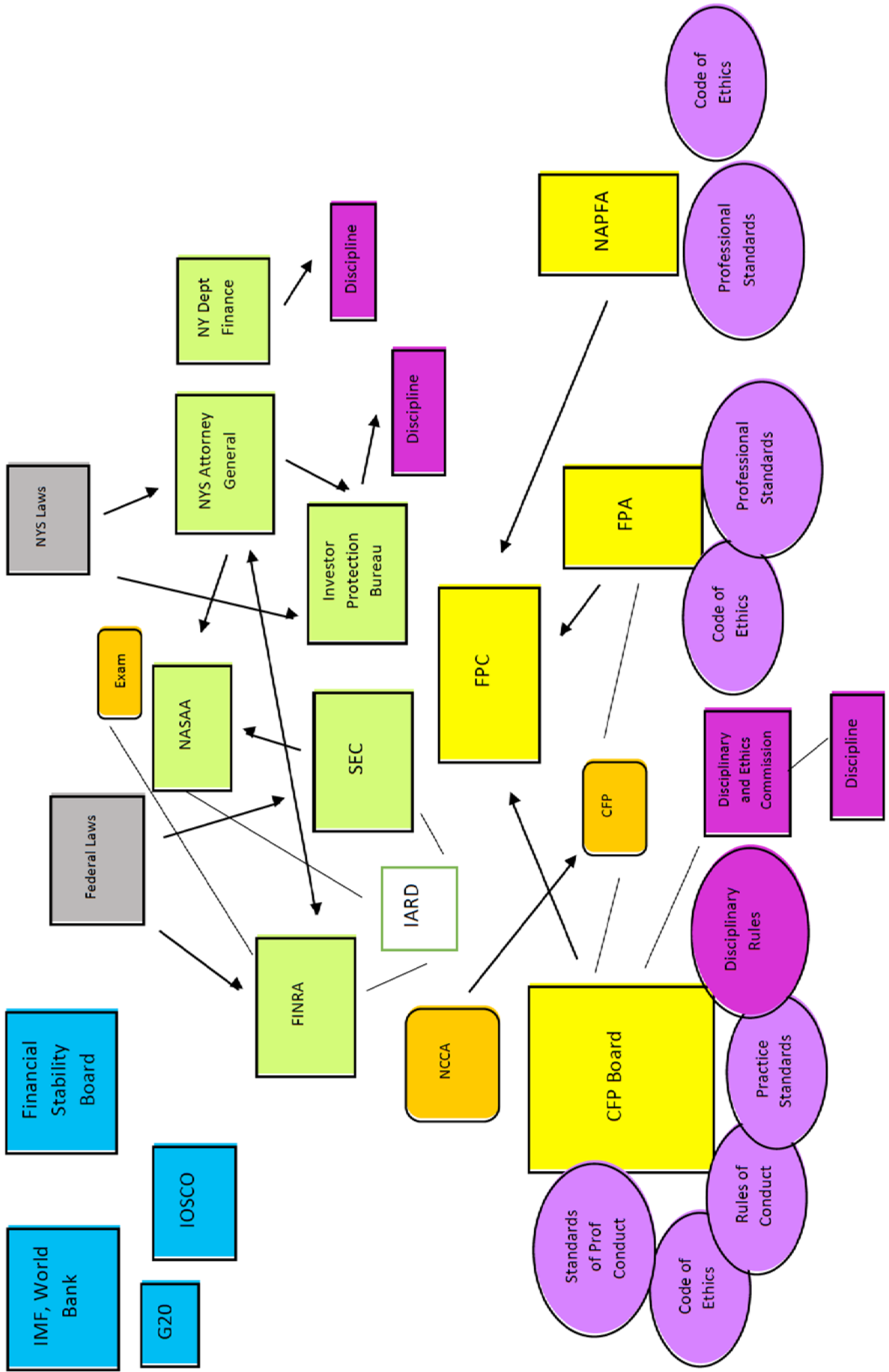
Financial Planners in Australia



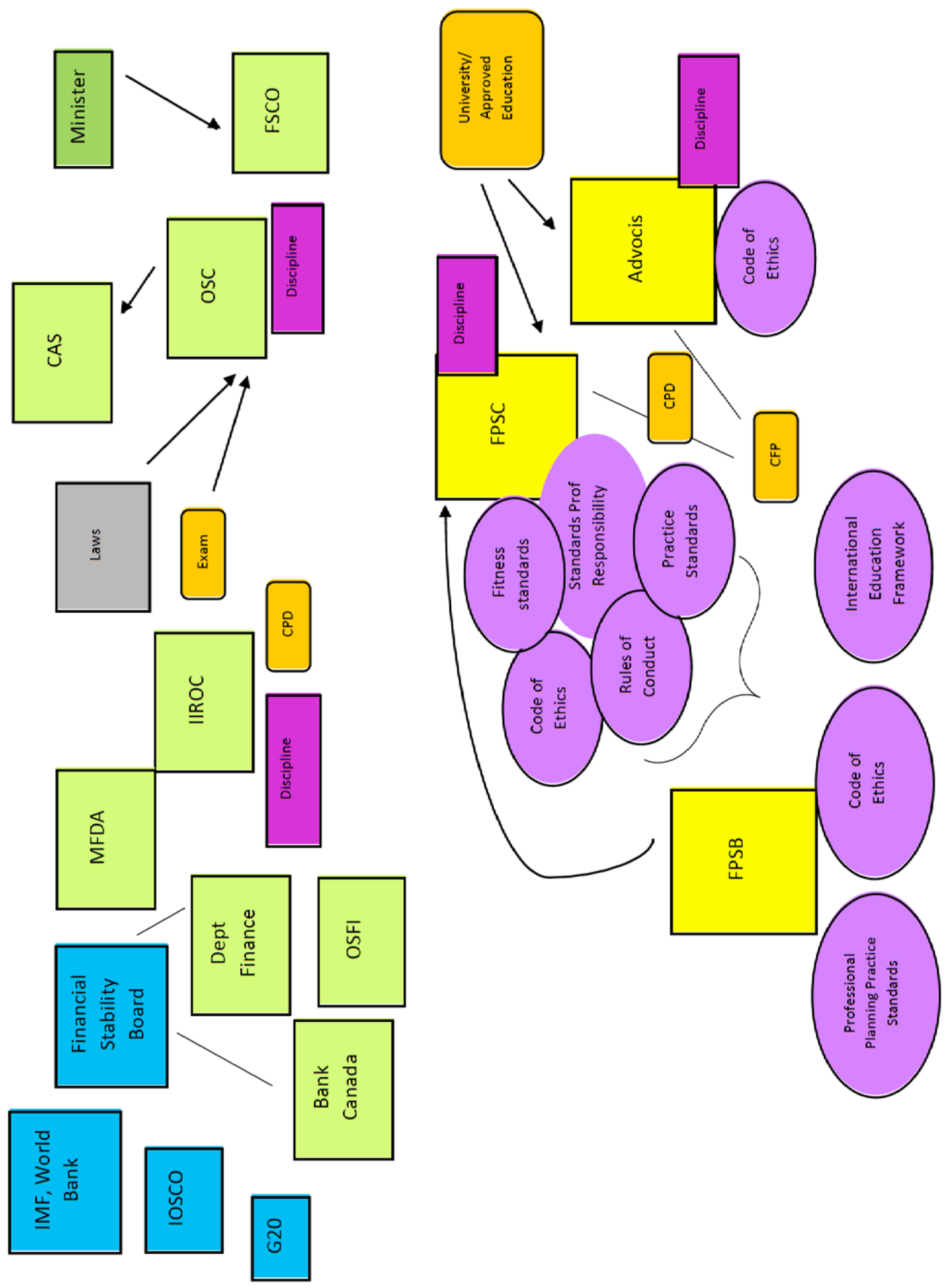
Financial Planners in the UK



Financial Planners in the USA



Financial Planners in Canada





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