

Regulation, Compliance and the Australian Forensic Accounting Profession

Jeanette Van Akkeren
Julie-Anne Tarr*

“An understanding that forensic accounting is the application of accounting principles, theories, and discipline to facts or hypotheses at issue in a legal dispute. Forensic accounting encompasses every branch of accounting knowledge and consists of two major components: litigation services and investigative services” The American Institute of Certified Public Accountants and Forensic Litigation Committee (2001)

Legacies of the Global Financial Crisis and major domestic corporate collapses – such as HIH Insurance Pty Ltd and One.Tel Ltd (telecommunications) – have significantly changed Australia’s financial regulatory landscape. Legal requirements for auditors have attracted particular attention as have practice standards more broadly around disclosure and conflict of interest. Conversely, although successful detection and prosecution of breaches may rest in significant part on forensic accounting activities, Australia’s practitioners in this field have no minimum training or qualifications standards other than the baseline requirements mandated by the country’s three professional accounting bodies. For those unaffiliated with these organizations, no professional oversight exists.

In Australia, growth in the forensic accounting industry has been in direct response to public demand for expertise in a broad range of fraud, forensic and business analytics areas in order to improve the corporate governance practices of Australian organizations. During the 1990s, Australian forensic accounting firms expanded and diversified into a number of different areas going well beyond just the examination of financial documents and involvement in financial litigation disputes. “Big 4” accounting firms such as PriceWaterhouseCoopers, KPMG, Deloitte and Ernst and Young formed independent forensic accounting or forensic services units;

* Jeanette Van Akkeren is a senior lecturer in forensic accounting in the School of Accountancy, Queensland University of Technology. Julie-Anne Tarr is Professor of Law in the School of Business, Queensland University of Technology.

a number of mid-tier and ‘boutique’ forensic accounting firms similarly expanded into forensic investigative, analytical and advisory services. By 2008, 800 forensic accountants were registered with the country’s largest specialist forensic accounting group, the Forensic Accounting Special Interest Group (FASIG) of the ICAA¹. Currently, obtaining more precise figures on numbers of forensic accounting practitioners is problematic: professional accounting bodies either do not keep a register or have ceased registering their forensic accounting members; lack of formal recognition, admission or certification processes complicate identification of candidates; and diversity of the skills sets the industry requires has meant the influx of non-accounting based specialists.

This last variable is of particular significance as demand for assistance with the investigation and prevention of fraud and corporate misconduct, support in litigation, as well as for general services such as investigation, business valuation, and the procurement of competitive business intelligence and analytics, has translated into a conglomerate of practitioners and professionals from different occupations in possession of their own credentials, certifications and qualifications. As Williams (2006) posits, the net result is that each group is subject to its own professional and industry codes, standards and obligations. Globalization and the growing capacity for outsourcing of services adds further dimensions to the nature – indeed capacity – to effectively regulate this field as do issues surrounding external training providers and international certification. Accordingly, while considerable debate exists over the need for more formal unified regulation of forensic accounting practice (Williams, 2005 & 2006; Huber, 2012 & 2013; Seda, Karmer & Peterson, 2008), no consensus has emerged. The most likely

¹ The Institute of Chartered Accountants Australia (now the Chartered Accountants Australia and New Zealand – CAANZ) is one of three professional accounting bodies, which also includes Certified Practising Accountants Australia (CPA Australia) and the Institute of Public Accountants (IPA).

forecasts are, if regulation is introduced, it will be in a self-regulatory rather than in a co-regulatory context for reasons discussed below.

The remainder of the paper is as follows – Section 1 describes the emergence in Australia of a forensic accounting profession with both affiliated and unaffiliated practitioners through an overview of the country’s legal landscape and its framework of self-regulation and co-regulation. Section 2 sets out the existing forensic accounting training and education programs along with other accreditation opportunities. Finally, sections 3 and 4 provide discussion and conclusions.

1. THE AUSTRALIAN REGULATORY FRAMEWORK

Australia shares the Anglo-US Common law tradition, a legacy inherited from its 1766 English settlement and its 1901 Federation into a Commonwealth country. Like the United States, legislative rights over regulatory powers are shared between the Commonwealth Government and the country’s six States and two Territories. Section 51 of Australia’s Constitution enumerates the powers allocated to the Commonwealth and provides for all residual powers to rest with the States. For purposes of forensic accountants, many areas of financial and corporate practices along with those deriving through interstate commerce rest with the Commonwealth. Other powers – such as regulation of professional bodies and consumer protection – have historically been reserved to the States.

Perhaps not surprisingly, the last decades have witnessed major legal struggles between the Commonwealth and States to identify an effective regulatory balance that, while respecting the legislative integrity of this provision, fosters market competition through reduction of anti-competitive trade barriers. With a population of 23 million, the importance of a national market and streamlined governance structures has proven a critical dynamic behind the scenes in

shaping the country's professional bodies regulatory frameworks including, in particular, those of accounting services.

A. Self-regulation and its historical legacy: Ethics, qualifications and conduct oversight

Historically the accounting industry has been self-regulating, with its first professional Ethic Code coming into force over a century ago. Over the last two decades a co-regulatory model emerged with statutes, such as the *Corporations Act 2001*, giving legal weight to Australia's Accounting Standards and providing heightened requirements for audit, tax and financial services activities.

The Profession's three main member organizations - the Institute of Public Accountants (IPA)², CPA Australia (CPA)³ and the Institute of Chartered Accountants of Australia (ICAA)⁴ – retain oversight and disciplinary responsibility for members' professional indemnity certificates, conduct and discipline, education and skills qualifications, and continuing professional education. Membership comprises broad industry recognizable standards of admission and is the primary gateway for ongoing professional education requirements. These organizations, which collectively represent the vast majority of Australia's accountants, are active advocates and advisors regarding regulation of the profession and liaise closely with the independent government bodies.

² IPA Requirements: Associate members (AIPA: a University Degree in Accounting or a TAFE Advanced Diploma in Accounting; membership: an Advanced Diploma in Accounting or Bachelor's degree in Accounting and IPA program study to obtain a Master of Commerce (Professional Accounting). CPE requirements are 80 hours/2 years. The IPA describes the term 'Public Accountant' as a globally recognized term for all Accountants serving the public, whether in practice, commerce, industry, government or the education sector See: www.publicaccountants.org.au

³ CPA membership organizational recognition of: a degree or a postgraduate award; demonstrated competence in prescribed foundation level knowledge; completion within a six-year period of its professional level examinations and the Practical Experience Requirement; 120 Continuing Professional Development hours per triennium (3-year period)/ with a minimum 20 hours annually. See: www.cpaaustralia.com.au

⁴ ICAA membership includes completion of the Graduate Diploma in Chartered Accounting (GradDipCA); 3 years of practical experience. Entry is available to graduates who hold an accounting degree, however those holding non-accounting degrees may also be permitted entry after some additional requirements are met. CPE requirements are for 120 hours/3 years. See www.charteredaccountants.com.au

For members of these organizations, conduct and discipline standards are established by *Australia's Code of Ethics for Professional Accountants*. The Code sets out professional and ethical requirements relating to the conduct and performance of professional services across various types of engagements or assignments. Historically the codes have been developed by various industry entities but as of 2006, promulgation and maintenance of the Code of Ethics for Professional Accountants (APES) was vested in the Accounting Ethical and Professional Standards Board Limited (APESB) – an independent national body established and funded by these three organizations.

APES110 *Code of Ethics for Professional Accountants* is the primary framework that sets standards for professional and ethical services including those of professional integrity, objectivity, competence, due care, and confidentiality. Most recently amended in 2011, the Code works in conjunction with all laws and regulations including where legislative instruments such as the *Corporations Act 2001* prescribe more specific requirements. Accordingly, where reference is made to relevant ethical requirements, such as those contained in Auditing Standard ASA 102 *Compliance with Ethical Requirements when Performing Audits, Reviews and Other Assurance Engagements*, APES 110 requirements have legal enforceability.

Standards for forensic accounting practices are specifically addressed by APES 215 *Forensic Accounting Services*. Introduced in 2009, and updated in 2013, it provides mandatory requirements and guidance for professional competency, independence, expert witness and evidentiary standards, false and misleading information and changes in opinion, quality controls and professional fees. APES 225 *Valuation Services* provides further oversight with the country's only specialist interest group in this field being the ICAA's Valuation Services. Both

APES 215 and 225 are applicable to non-accountant members of CPA Australia, ICAA and IPA – but lack authority over any practitioners who are not part of these bodies.

Enforceable quality and conduct standards for non-members therefore are limited to civil actions arising out of Australia's broader legal framework of consumer protection and negligence standards, as discussed below.

B. Co-regulation: accounting standards and Australia's legal framework

Over the last several decades, a number of independent regulatory bodies have been introduced to give legislative enforceability and oversight to accounting standards (see Table 1). No single body now holds responsibility for regulation of this profession – and, by extension, the relatively new field of forensic accounting services. As a reflection of not only fallout from the GFC but also the country's Constitutional allocation of its Federal/State powers, the shape of much of this recent legislation is tied to specific financial and corporate activities accountants provide – notably in relation to audit, tax and financial services. *The Corporations Act 2001* is the principal enabling provision that gives enforceability to many of these provisions such as the Australian Accounting Standards (AAS).

The Australian Accounting Standards Board is the main body charged with formulating and maintaining the Australian Accounting Standards and with ensuring consistency with international standards. The Board, which has been through a range of iterations since its 1984 inception, was established under section 226 of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of the *Australian Securities and Investments Commission Act 2001*. It is administered by a single national authority, the Australian Securities & Investments Commission (ASIC), which is charged with enforcing and

regulating company and financial services to protect Australian consumers, investors and creditors.

As of 2000, the *ASIC Act* also provided for the introduction of the *Financial Reporting Council (FRC)* as the peak body responsible for overseeing the effectiveness of Australia's financial reporting framework. Paralleling the role played by its equivalent in the UK and the Republic of Ireland, the *FRC* oversees at a strategic level the accounting and auditing standards setting processes for the public and private sectors along with advising the Minister on audit and related matters that impact on the country's financial reporting framework.

Legislative Authority	Regulatory Body	Functions
<i>Corporations Act 2001 (Cth)</i>	ASIC	Australian Accounting Standards, regulations, interpretations
<i>Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004.</i>	The Financial Reporting Panel (FRP)	Independent body that resolves disputes between the Australian Securities and Investments Commission (ASIC) and companies concerning the application of accounting standards. <ul style="list-style-type: none"> • Established to overcome concerns about the use of courts for adjudication on technical accounting issues; • Matters may be referred to the FRP by ASIC, or by a company if ASIC consents.
<i>ASIC Act 2001 (Cth)</i>	Financial Reporting Council (FRC)	Accounting Professional & Ethical Standards Board (APESB) has: <ul style="list-style-type: none"> • broad oversight of the process for setting accounting standards in Australia; • provides Ministerial reports and advice on accounting standards.
<i>ASIC Act 2001 (Cth)</i>	Australian Accounting Standards Board (AASB)	Independent body that makes accounting standards: <ul style="list-style-type: none"> • for the private, public and not-for-profit sectors; • participates in the formulation of international accounting standards It is subject to broad oversight by the Financial Reporting Council.
<i>ASIC Act 2001 (Cth)</i>	Auditing and Assurance Standards Board (AUASB)	Independent, statutory agency responsible for developing standards and guidance for auditors and providers of other assurance services.
<i>ASIC Act 2001 (Cth)</i>	Accounting Professional & Ethical Standards Board (APESB)	Independent national body established and funded by CPA Australia, ICAA and IPA to set and maintain the code of ethics and professional standards with which its members must comply. <ul style="list-style-type: none"> • Maintains and develops accounting standards for the private, public and not-for-profit sectors. • Participates in the formulation of international accounting standards.
<i>ASIC Act 2001 (Cth)</i>	Australian Securities and Investments Commission	Independent body that enforces and administers Corporations Law and consumer protection law for investments, life and general insurance, superannuation and banking (except lending). <ul style="list-style-type: none"> • Accounting Board; FRC

	(ASIC)	<ul style="list-style-type: none"> • Auditors and liquidators – through the Companies Auditors and Liquidators Disciplinary Board (CALDB) • Company directors • Financial Planners
<i>Tax Agent Services Act 2009 (Cth)</i>	Tax Practitioners Board (TPB)	National body responsible for the registration and regulation of tax practitioners which also ensures compliance with the <i>Tax Agent Services Act 2009 (TASA)</i> , including the <i>Code of Professional Conduct</i> .
<i>Superannuation Industry (Supervision) Act 1993</i>	Australian Prudential Regulation Authority (APRA)	Prudential regulator of banks, insurance companies and superannuation funds, credit unions, building societies and friendly societies.
<i>Financial Transaction Reports Act 1988 (Cth)</i>	Australian Transaction Reports and Analysis Centre (AUSTRAC)	Australia's anti-money laundering and counter-terrorism financing regulator. and financial intelligence unit. It oversees: <ul style="list-style-type: none"> • compliance by a range of financial services providers, the gambling industry, bullion dealers and remittance service providers; and, • provision of financial information to Australian law enforcement and revenue agencies.

Table 1: Summary of Accounting Standards and Australia’s Legal Framework

C. Statutory regulation: forensic accounting in the shadow of broader consumer protection requirements

Regulatory oversight of a professional body is designed to protect the quality of services provided and the reputation generally of the discipline in doing so. One of the principal services retained by the professional oversight bodies in this respect is the discipline process attaching to consumer complaints regarding members. Absent this service, those aggrieved over poor quality services would be reliant on existing legal avenues standardly available for consumer protection. The following two sections examine the existing legal framework of rights that are in place in relation to delivery of services both to consumers and in the more specialized context of expert witness litigation within the courts.

D. Consumer protection

Practitioners who fall outside the scope of the provisions outlined above are not immune to malpractice consequences. In addition to standard negligence rights, a range of consumer protection laws and precedents afford remedies to aggrieved clients.

Identification and prosecution of these rights has recently become substantially easier with the passage of the *Competition and Consumer Act 2010 (Cth) (CCA)* and the *Australian Consumer Law (ACL)* that comprises Schedule 2 of the *CCA*. Prior to the passage of the *ACL* the system of regulation was much more confusing with some causes of action being regulated by Commonwealth provisions, some by State and Territory non-uniform legislation, and some by the basic principles of contract law. As of 2011, a single regime regulates consumer law and fair trading in a consistent manner across all jurisdictions.

Consumers may, through this mechanism, have potential causes of action for services or representations that can be shown to be – on a strict liability basis – misleading or deceptive or such that they are likely to mislead or deceive.⁵ Similarly, service providers who engage in unconscionable conduct standards⁶ are subject to reasonably well tested provisions; and unfair contracting provisions⁷ have recently been introduced in the 2010 overhaul of the *CCA*.

A range of fitness-for-purpose guarantees are set out in relation to certain types of consumer goods and services. Under s.54 of the *ACL*, goods and services must be of acceptable quality and, in that context, fit for all purposes which goods/services of that kind are commonly provided based upon on a reasonable person standard as to quality standards. This provision is further reinforced by s.55 which ensures goods/services meet the functionality test for any specifically disclosed purposes.

In addition to recourse to the court system, depending on the nature and size of the complaint, consumer relief may also exist through the Australian Competition and Consumer

⁵ *Competition and Consumer Act 2010 (Cth)*, Schedule 2 s. 18

⁶ *Competition and Consumer Act (2010)*, Schedule II, Australian Consumer Law, s. 21

⁷ *Competition and Consumer Act (2010)*, Schedule II (Australian Consumer Law), s. 23

Commission or the local consumer protection authority (such as the Civil and Administrative Tribunal) or, in limited cases, with the Financial Ombudsman Service.

E. Expert Witness Code of Conduct, Qualifications and Rules of Court

Interface between forensic accountants and the court systems are another area of particular concern to commentators in relation to the absence of formal industry certification processes. Two distinct problems are raised: first, where questionable conduct of qualified forensic accountants occurs, the industry as a whole may be dragged into disrepute; second, the lack of framework for identifying qualifications and expertise is problematic both under the wording of expert witness court requirements and, arguably, in the context of court proceedings.

Generally, commentators pointing to the second concern rose above focus on rules of court that, as a preliminary filtering process, set certain standards for expert witnesses to be recognized. The NSW and Federal Rules are illustrative in that they place the onus on both the attorneys and the experts themselves to submit formal industry qualifications and experience as part of the initial stages of the trial process, thereby creating an early bar for those who do not meet the requisite industry standard. The absence of formally recognized qualifications in this field therefore is less than ideal. Justice Heydon, now of the High Court of Australia, summarized this concern in *Makita (Australia) Pty Ltd v Sprowles* by noting:

“If evidence tendered as expert opinion evidence is to be admissible, it must be agreed or demonstrated that there is a field of “specialized knowledge”; there must be an identified aspect of that field in which the witness demonstrates that by reason of specified training, study or experience, the witness has become an expert; the opinion proffered must be “wholly or substantially based on the witness’s expert knowledge”; so far as the opinion is based on facts “observed” by the expert, they must be identified and admissibly proved by the expert, and so far as the opinion is based on “assumed” or “accepted” facts, they must be identified and proved in some other way; it must be established that the

facts upon which the opinion is based form a proper foundation for it; that the opinion of an expert requires demonstration or examination of the scientific or other intellectual basis of the conclusions reached: that is, the expert's evidence must explain how the field of "specialized knowledge" in which the expert is expert by reason of "training, study or experience", and on which the opinion is "wholly or substantially based", applied to the facts assumed or observed so as to produce the opinion propounded."

Currently, as discussed in the section on *International Forensic Accounting Certification* later in the paper, a range of domestic and international qualifications are used as evidence of expert status. Given the foundation role that forensic accountants commonly play in the complexities of the litigation process, however, arguments for a formal industry standard are probably most readily supportable for this procedural – and pragmatic – reason (Williams, 2006; Huber, 2013).

The primary concern – that of inadequately trained forensic accounting practitioners tarnishing the industry's reputation – is arguably not a problem unique to forensic accountants. Many fields are inherently complex and require a breadth of knowledge of both subject matter and legal proceedings. Although expert witnesses and advisors play a critical role, they necessarily share the work burden with solicitors (and even Judges) charged with the actual operation of proceedings.

Towards striking an appropriate balance in this respect, Australian courts have introduced formal fiduciary requirements into Court Rules regarding conditions surrounding how experts deliver their testimony as well as on the barristers and solicitors involved in litigation proceedings. For forensic accountants, preliminary expert certification processes under court rules for most jurisdictions are reflective of APES 215 Expert Witness standards. 'Experts' who will be presenting at trial therefore are required to formally submit their 'expert qualifications' as part of a statutory declaration that includes acknowledgement of and

familiarity with the Court's Code of Conduct and, and specifically, its requirements that an expert's primary duty rests first with the court in all instances. Court Guidelines for Experts provide additional back up ensuring that a solicitor who commissions work from an Expert must also certify that the Expert has been provided with a current copy of court rules/guidelines.

Although this preliminary process does not pre-empt poor performance by a forensic accountant, regardless of membership in professional bodies, it does provide a level of re-enforcement for those who would not otherwise be bound by APES 215. Similarly, although poor performance in court or in surrounding litigation contexts is something that can undermine a discipline's credibility if frequently repeated, the presence of well-trained judges and opposing counsel well used to challenging and assessing competency baselines of witnesses adds some levels of comfort as to whether under-qualified individuals would be regularly engaged in this process – or, more to the point, whether formalization of industry requirements would mitigate risk to any more substantial level.

A second mechanism pioneered by Australian courts designed more broadly to address issues of competency, credentials and narrowing of areas of contention in expert witness testimony is that of 'concurrent evidence' or, colloquially, 'hot tubbing'⁸ This practice enables the concurrent testimony of experts called by both sides in effectively a panel format. Experts are able to ask questions of each other, be questioned by the judge and contribute more broadly to development of the topic under discussion than is arguably the case in traditional processes whereby each side calls the designated expert separately and cross examines on this basis.

Although not uniform throughout Australia, it is the type of process that would make the broader

⁸ *Expert Evidence in Copyright Cases – Concurrent Expert Evidence and the 'Hot Tub'*, Copyright Reporter Vol 28 No 1 (March 2010); Lisa C Wood, *Experts In The Hot Tub* (2007) 21 Anti-Trust 95; Megan A. Yarnall, 'Dueling Scientific Experts: Is Australia's Hot Tub Method a Viable Solution for the American Judiciary?', 88 Or. L. Rev 311 (2009) at p 312; The Hon Geoffrey L Davies, *The Changing Face of Litigation*, (1997) 6 J. Jud Admin 179, 188

recognition standard under discussion above to be more readily vetted. Forensic accountants would presumably be more easily able ensure timely transparency regarding credentials or training patterns that might cause some concern or potential for shortfall in competency.

2. EXISTING PROGRAMS AND ACCREDITATION

Education and specialized training of accounting professionals can be offered by either universities and other educational institutions, professional accounting bodies, for-profit and not-for-profit certification providers, and/or government bodies (generally a designated, nationally accredited and registered training provider overseen by a regulatory body such as ASIC or the *FMA Act*); each is addressed below.

A. University forensic accounting courses – minors, majors, courses and certificates

Over the past 25 years, university accounting disciplines around the world have been revising their accounting curricula to include courses in fraud/forensic accounting and investigation. An initial review of these courses indicates there are quite divergent approaches to their development (Smith and Crumbley, 2009) and Australia is no exception.

Up until 2012 there were very few dedicated forensic accounting degrees in Australia - with the notable exceptions of the University of Wollongong, University of Melbourne, Monash University and, more recently, Queensland University of Technology. However, in very recent times many new fraud and forensic accounting courses have emerged such as those offered by RMIT, University of South Australia, Charles Sturt University, Swinburne University and Latrobe University. However, the breadth and depth of offerings vary considerably and at the time of writing this paper, there is scant research identifying whether university offerings are providing industry with the desired knowledge, skills and capabilities the accounting profession seek.

This variance, coupled with an absence of professional accounting body forensic accounting specializations (other than Valuation Services) further exacerbates issues surrounding the professional status of forensic accounting and investigation in Australia. There are two potential issues: one, that there is still a level of uncertainty on what universities should be offering in support of industry; and two, increasing pressure on professional accounting bodies to ensure members hold a minimum standard of education, knowledge and skills. Since the training required to perform an investigative or forensic engagement is not typically part of the accounting curriculum, it is assumed that specific education in investigative techniques and communication skills is required to prepare for a career in this area (Meier *et al.*, 2010). As Van Akkeren, Buckby and MacKenzie (2013) report from interviewing Australian forensic accounting professionals, there was a level of frustration at the lack of skills held by forensic accountants in the areas of both written and oral communication in expert reports.

B. Professional accounting body designations – the ongoing debate

Regulation of forensic accounting practitioners involves a combination of self-regulation, statutory provisions and consumer protection laws. Practicing as an accountant outside these standards is not prohibited, however, holding membership in a professional accounting body is optional. Unlike the legal profession, for example, where by statute, use of the term solicitor or barrister for financial returns purposes is prohibited;⁹ ‘accountant’ is open nomenclature. This variation in professional status not surprisingly complicates the establishment of codes of conduct and professional legitimacy.

To identify whether forensic accounting practitioners have the necessary skills and knowledge to carry out specialized work, the public, courts, government and/or regulatory bodies

⁹ See, for example: *NSW Legal Profession Act 2004*, Pt. 2.2, ss 14-16; *Victorian Profession Act 2004*, ss. 2.2.2-2.2.4; *Queensland Legal Profession Act 2007*, Div. 2, s. 25

may seek evidence of formal forensic accounting designations such as certifications and/or licensing. However, Australian professional accounting bodies do not currently provide formal forensic accounting certification.¹⁰ Both the ICAA and CPA Australia offer specialist sections. The ICAA has the Forensic Accounting Special Interest Groups (FASIG) – the country’s largest special interest group – and a Business Valuation Special Interest Group (BVSIG). CPA Australia offers the Forensic Accounting and Investigation Discussion Group (FAIDG). All presuppose professional accounting body membership and offer education, training, forums and newsletters benefits. None, however, have any related expertise requirements or formal examination¹¹.

Accordingly, one commentator criticizes the current landscape as enabling those working in the forensic accounting industry as being free to create the professional identity that most suits their role or the market (Williams, 2006). This raises several issues: first, that persons marketing themselves as forensic accountants may lack formal accounting qualifications or adequate levels of forensic accounting knowledge or skills, resulting in poor services being provided to the public; second, that public confidence in the field as a whole may – on the basis of poor work product and/or lack of certification/regulation – suffer; and third, that a level playing field in terms of training, memberships, professional indemnity, experience and other financial dynamics could potentially skew the provision of services and competition in the market.

C. Government Training – Public versus private mandates

¹⁰ For international comparatives, see, for example, the Canadian Institute of Chartered Accountants (CICA) which offers an Investigative and Forensic Accounting designation (CA.IFA); the US-based American Institute of CPAs (AICPA) which offers the Certified in Financial Forensics (CFF) and Accredited in Business Valuation (ABV) designations; and, in the UK the ICAEW offer the Forensic Accountant Accreditation (FAA), and the Accredited Accountant Expert Witnesses (AAEW) in partnership with the TAE2.

¹¹ An exception is Valuation Services – a specialization offered by the ICAA. However it is not compulsory to hold this specialization to practice.

Forensic accountants undertaking investigative work in government agencies require various forms of licensing. For Commonwealth fraud external investigations, that is, those conducted by the Australian Tax Office (ATO), Centrelink and other government departments, the requirement is Certificate IV in Government (Investigations) and for managers the Diploma in Government (Investigations). For conducting internal investigations the requirement is Certificate IV in Government (Fraud Control). These requirements fall under the Commonwealth Fraud Control Guidelines, which established the policy framework and articulate the Government's expectations for effective fraud control for all agencies subject to the *Financial Management and Accountability (FMA) Act 1997*, meeting requirements of the *Legislative Instruments Act 2003*.

Falling under the *Tax Administration Act* or *Income Tax Act*, the Australian Tax Practitioners Board has their own Certificate IV in Civil Investigations (not recognized outside of the ATO). However, for investigations for the TBP or the Serious Non-Compliance audit team, there is no requirement for Certificate IV qualification as it is not considered fraud as per the *Crimes Act*.

The certificates are specialist qualifications that address competencies required for statutory investigations and fraud control in agencies such as Centrelink, Australia Post, Customs, the ATO and the Department of Veterans Affairs. Breaches of the Guidelines can attract a range of criminal, civil, administrative and disciplinary remedies (including under the *FMA Act*, the *Public Service Act 1999*, the *Criminal Code* and the *Crimes Act 1914*)¹². Non-compliance with the financial management framework is also reported on in agency Certificates of Compliance.

¹² Source: Commonwealth Fraud Control Guidelines – F2011L00511: <http://www.comlaw.gov.au/Details/F2011L00511>

D. Other accreditation structures – a banquet of choices

1) Forensic Accounting Investigation

Forensic accountants have a number of options for obtaining an investigative license from for-profit and not-for-profit providers such as the Australian Security Academy, the Australian School of Security and Investigations, Australian Forensic Services, the Australian Defense Force, State Police and Federal Police. However, it is not mandatory to hold an investigative license for forensic accounting investigations outside of government agencies. Within the context of regulation, this raises a number of concerns. For example, if each certification body offering investigative licenses has variations in examination/training requirements, the content of the certification program, and/or codes of conduct, how is consistency and compliance across all forensic accounting investigations overseen? Is compliance monitored? Are providers suitably qualified to run these programs? How do professional accounting bodies and large corporations make informed decisions on the suitability of various licensing programs on offer? And perhaps most importantly, why is licensure not mandatory for forensic investigations in non-government organizations?

Economic theory emphasizes the importance of credibility-enhancing and value-adding functions, providing an independent third party who can verify financial information (Campbell & Houghton, 2005). Although referring to the audit function, there is relevance to forensic accounting and forensic investigation. Licensure and/or certification are designed to improve public confidence, particularly in relation to consistency, reliability, independence, confidentiality and judicial compliance from professionals offering their services.

2) International Forensic Accounting Certification

Many Australian forensic accounting practitioners have, regardless of professional membership affiliation, sought additional accreditation from international providers such as the US Association of Certified Fraud Examiners (ACFE), the Association of Certified Forensic Investigators (ACFI), and the Institute of Certified Forensic Accountants designation CPFACct – all industry-based organizations (Chen & Van Akkeren, 2012).

International affiliations may, however, create additional complications for Australian consumer protection purposes. Ensuring the standards behind affiliate memberships are not misleading can be problematic: international certifications in forensic accounting and business valuation offered by professional accounting bodies require formal accounting qualifications and/or experience in the field and those applying must pass examinations and undertake continuing education programs; those offered internationally by private providers conversely may lack stringent entry-level requirements and omit background requirements. What emerges from this in the Australian context is several-fold. First, for marketing and strategic positioning in the profession, these labels may carry value; for quality signaling purposes though, at the present time, their value may be less clear (Edwards, 2001; Larson, 1977). Second, for those advocating formal regulation or certification within Australia, as Williams (2006) points out, developing universally applicable professional standards or “best practices” for the industry is made that more challenging by having multiple and overlapping professional identities that have varied professional status, certification and codes of conduct.

Not all commentators are concerned by the lack of specialized Australian-based forensic accounting certifications for the range of non-mainstream accounting tasks associated with the role as its complexity makes a “one size fits all” certification impractical. Within this framework, it is argued that existing legislation through professional bodies as well as in conjunction with

the court system (e.g., expert witness provisions and rules of court) and, more broadly, through the *Australian Competition and Consumer Act (2102)*, consumer protection provisions are sufficient. A paucity of other ‘special’ categories – with audit and tax being the notable exceptions – makes justifying intervention more difficult. It also parallels a broader trend across professional bodies of limiting specialist nomenclature where possible to avoid introducing an artificial barrier to entry that may undermine efficient provision of market services. Whether protective designations for forensic accounting are merited, therefore, runs in tandem with a range of other professions’ deliberations over the last decade as these bodies move towards national regulatory standards that support the country’s objectives of removing anti-competitive barriers.

3. DISCUSSION

The debate on forensic accounting regulation coincides with a decade of focused movement toward national regulation of professions across Australia and of significant statutory reform to financial services laws flowing from the GFC and domestic high profile corporate collapses. For the accounting profession, this has translated into introduction of a number of legal provisions regulating accounting functions. Generally, this has resulted in greater quality assurance for work product of members of the three major accounting bodies, particularly in relation to specialist areas such as audit, tax and financial advising. The gap between accountants who are non-members of these organizations – and outside the scope of these provisions in many instances – has been further exposed.

For forensic accounting practitioners who fall outside the accounting profession or who for some reason elect not to join a professional accounting body, the primary regulatory framework devolves to common law rights, such as negligence, and consumer protection

statutes. Industry benefits of ethics and practice standards, complaint channels and insurance indemnity requirements may be less readily observed and enforced. For this reason, a growing number of commentators advocate the introduction of formal entry requirements and/or other regulatory oversight frameworks (Williams, 2005; Williams, 2006; Huber, 2013).

Regarding the expert witness role, the complexities of the litigation process create substantial potential for pitfalls. Translating forensic findings into court settings may be undermined by the expert's incapacity to adhere to strict evidentiary and discovery requirements, comply with court proceedings and rules of court, understand the varied rules that individual jurisdictions require, or fall short of the sophistication that rigorous legal cross-examination may necessitate. Additionally, the cross-section of laws over which forensic accountants may be called upon to assist legal counsel engage in trial preparation – that is anything from helping lawyers prepare for cross-examination of opponents' witnesses and experts through to identifying documents necessary to be procured for discovery, subpoena or as testimony bases or for settlement or alternative dispute resolution purpose – is myriad.

In a recent address, former High Court Justice Michael Kirby (2011) identified a range of cases in which forensic accountants have played key roles and required related expertise as including:

Commercial contract claims for breach of contract terms or repudiation; intellectual property; merger and acquisition disputes, trade practices infringements, loss of income or earning potential arising from tort and workplace accidents, product liability claims, environmental claims, insurance claims, ledger liability claims for of a contract to lend or invest funds, taxation, construction and family law disputes involving business valuations and property settlements.

The complexity of this role combined with the lack of formal qualifications held by forensic accountants poses two distinct problems. First, a number of commentators have

expressed concern that the potential damage that under-qualified forensic accountants may inflict through contaminating admissibility trails or in other ways undermining the integrity of the original transfer processes is such that formal standards are needed. Second, concerns are expressed even by judges themselves as to the difficulty of satisfying preliminary expert standards for standing in court with no official framework to put around an individual's qualifications. Although these arguments are compelling on initial review and would seem to mandate the introduction of some formal industry recognition standard, several commentators argue that the Court systems and their participants are well used to vetting expert witnesses and dealing with the potential shortfalls that surround this role. Further, judges and opposing barristers are capable of assessing the quality of proffered opinions.

Historically, as evidenced by legislative reforms in the 1970's to consumer protection laws and, again, in the early 2000's to audit and financial services standards, the Australian government regulates when the public interest is perceived as being at risk from a professional group. Prior to regulation, accounting specializations - including auditing, taxation, servicing of self-managed superannuation fund, and financial advising - were self-regulated or unregulated. The relatively new field of forensic accounting has to date followed the same path. However, the multi-skilled nature of the forensic accounting industry, which encompasses areas of accounting, law, investigation and computer forensics, creates challenges in regard to standard setting, governance, regulation and education. As the ICAA web site posits: "*A forensic accountant is part detective, part lawyer, part accountant*" (ICAA, 2012) and, at any given time, a practicing forensic accountant may be required to demonstrate expertise in one or more of those fields.

This mix of diverse occupational jurisdictions is challenging for professional accounting bodies, the courts and government agencies in their attempts to oversee and regulate practice.

When the NSW Law Reform Commission requested that forensic accounting experts be certified in 2005 (NSW Law Reform Commission Report, 2005), the ICAA and CPA Australia successfully argued that the complex nature of forensic accounting constrains the ability of professional accounting bodies to offer certification. In addition, the problem of voluntary membership to professional accounting associations is that anyone is able to claim the title of “forensic accountant”. There will no doubt continue to be problems associated with law-related and investigative contexts of forensic accounting practice, with legal requirements placing pressure on professional accounting bodies to better regulate the quality of services provided by forensic accounting practitioners. Issues relating to breaches in following rules of gathering evidence, interviewing techniques, and the quality of expert witness reports (written and oral) are ones that demonstrate where greater levels of regulation and governance of practice may be sought. However, it remains to be seen how the profession will evolve, particularly in relation to unaffiliated forensic accountants.

4. CONCLUSION

Incidences of individual and large-scale fraud, bribery and corruption are expected to continue their growth trajectory with reports from “Big 4” firms highlighting social media and cybercrime as particularly threatening to governments, organizations and the public in general. The number of practitioners servicing demands for forensic accounting expertise will need to match this growth. Commercial interest from large, mid-tier and small accounting firms has led to the recruitment of forensic accounting practitioners from different occupational jurisdictions (accounting, law, policing and computing) to deal with fraudulent incidences and this trend is expected to continue. Professional accounting bodies through the APESB monitor professional conduct and regulate member behavior through standards APES110, APES215 and APES225,

which helps to build a level of credibility and formally recognize the important role forensic accountants' play in investigations across a diverse range of legal jurisdictions. However, regulation and monitoring of individual forensic accounting practitioners under these standards is dependent on whether professional accounting body membership is held.

Although 'safety net' legislation is in place both in relation to consumer interests and judicial processes, providing redress in circumstances where non-industry affiliated independent forensic accountants may fall short of the industry standards, and, given the significant consequences poor performance may have across the admissibility, if not viability, of a case, further consideration of formalizing practicing standards is advocated. It is unlikely, given Australia's regulatory history in relation to statutory introduction of co-regulatory models that, at this time, forensic accounting would be of sufficient wide-spread concern to merit the types of provisions recently introduced in audit, financial advising and tax areas. Given the gap in the self-regulatory capacities of the country's professional accounting bodies to establish baseline standards for all working in this area, however, clarifying the nature of credentials and training should be a priority, particularly if the introduction of a compulsory certification program appropriate to the cross-disciplinary nature of this field cannot be readily introduced.

REFERENCES

- Ayres, I., & Braithwaite, J. (1992). *Responsive regulation: Transcending the deregulation debate*. New York: Oxford University Press, Incorporated.
- Bartle, I., & Vass, P. (2005). *Self-Regulation and the Regulatory State: A Survey of Policy and Practice*. Research Report 17, Centre for the Study of Regulated Industries, University of Bath.
- Bartle, I. & Vass, P. (2007). Self-Regulation within the Regulatory State: Towards a New Regulatory Paradigm? *Public Administration*, 85 (4), 885-905.
- Birkett, W. P. & Evans, E. (2005). Theorising professionalisation: A model for organising and understanding histories of the professionalising activities of occupational associations of accountants. *Accounting History*, 10(1), 99-122.
- Black, J. (1996). Constitutionalising Self-Regulation. *Modern Law Review*, 59 (1), 24-55.
- Campbell, T. and Houghton, K. (2005) *Ethics and Auditing*, ANU E Press.
- Chen Y. & Van Akkeren, J. (2012) The Theory of Profession: Accountability, qualifications, entry and ethics - a preliminary discussion and early findings on the current state of forensic accountancy in Australia. *Conference Proceedings from the 2nd Forensic Accounting Teaching and Research Symposium*, February 2012. Available at: <http://business.uow.edu.au/content/groups/public/@web/@commerce/@econ/documents/doc/uow120441.pdf> (Accessed on February 21, 2014).
- Edwards, J. R. (2001) Accounting regulation and the professionalization process: An historical essay concerning the significance of P.H. Abbott, *Critical Perspectives on Accounting*, 12, 675-696.
- Forensic Accounting Special Interest Group of the Institute of Chartered Accountants in Australia (FASIG) (2005), "Green Paper on Accreditation of Forensic Accountants, The Institute of Chartered Accountants in Australia", in *National Forensic Accounting Conference Proceedings 2005*, pp.1 – 8.
- Gaffikin, M. (2005). *Regulation as accounting theory*. Working Paper Series 05/09. University of Wollongong.
- Gupta, A. K. & Lad, L. J. (1983). Industry Self-Regulation: An Economic Organizational, and Political Analysis. *Academy of Management Review*, 8 (3), 416-425.
- Huber, W. D. (2012) Is forensic accounting in the United States becoming a profession?, *Journal of Forensic and Investigative Accounting*, 4(1), 255-84.

- Huber, W. D. (2013) Forensic Accountants, Forensic Accounting Certifications, and Due Diligence, *Journal of Forensic and Investigative Accounting*, 5 (1), Available at SSRN: <http://ssrn.com/abstract=2210016> (Accessed on March 15, 2013)
- Institute of Chartered Accountants in Australia (ICAA) (2012), “Forensic Accounting in the Spotlight”, available at: <http://www.charteredaccountants.com.au/Students/News-and-updates/High-school/Forensic-Accounting-in-the-spotlight.aspx> (Accessed on March 26, 2013).
- Jubb, C. & Houghton, K. (2007). The Australian auditing and assurance standards board after the implementation of CLERP 9. *Australian Accounting Review*, 17, 18-27.
- Kirby, M., AC CMG, Forensic Accounting – New Rules and Opportunities, Conference proceedings, Chartered Accountants – Business Valuation and Forensic Accounting Special Interest Groups, 11 March 2011. <http://www.michaelkirby.com.au/images/stories/speeches/2000s/2011/2525-FORENSIC-ACCOUNTING-CONF-MARCH-2011.pdf> (Accessed February 15, 2014).
- KPMG (2012) A survey of fraud, bribery and corruption in Australia and New Zealand 2012, <http://www.kpmg.com/AU/en/IssuesAndInsights/ArticlesPublications/Fraud-Survey/Documents/fraud-bribery-corruption-survey-2012v2.pdf> (Accessed on February 14, 2014).
- Larson, M. S. (1977), *The Rise of Professionalism: A sociological Analysis*. Berkeley: University of California Press.
- Meier, H. H., Kamath, R. R. & He, Y. (2010), “Courses on forensic accounting and fraud examination in the accounting curriculum”, *Journal of Leadership, Accountability and Ethics*, 8, 25-33.
- Moran, M. (2003). *The British Regulatory State: High Modernism and Hyper-Innovation*. Oxford: Oxford University Press.
- NSW Law Reform Commission Report 109 – Expert Witnesses (2005), Accessed on April 9, 2013 at www.lawlink.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/vwFiles/.../r109.pdf (Accessed on July 10, 2013)
- Palzer, C., & Scheuer, A. (2003). Self-regulation, Co-Regulation & Public Regulation. In U. Carlsson & C. von Feilitzen (Eds), *Promote or Protect? Perspectives on Media Literacy and Media Regulations* (pp. 165–178). Göteborg, Sweden: The UNESCO International Clearinghouse on Children and Violence on the Screen.
- Priest, M. (1998). The Privatization of Regulation: Five Models of Self-Regulation. *Ottawa Law Review*, 29 (2), 233-302.

PriceWaterhouseCoopers (PwC) Economic Crime Survey (2012) Cybercrime: Out of obscurity and into reality', 6th PwC Global Economic Crime Survey, <http://www.pwc.com.au/consulting/assets/risk-controls/global-economic-crime/Global-Economic-Crime-AU-Mar11.pdf> (Accessed February 14, 2014).

Seda, M., Kramer, B. & Peterson, K. (2008) The emergence of forensic accounting programs in higher education, *Management Quarterly*, 9(3), 15-24.

Smith, G. S. & Crumbley, L. (2009), "Defining a forensic audit", *Journal of Digital Forensics, Security and Law*, 4 (1), 61-79.

Van Akkeren, J., Buckby, S. & MacKenzie, K. (2013) A metamorphosis of the traditional accountant: An insight into forensic accounting services in Australia, *Pacific Accounting Review*, 25 (2), 188-216.

Williams, J. W. (2005) Governability matters: The private policing of economic crime and the challenge of democratic governance, *Policing and Society*, 15 (2), 187 – 211.

Williams, J. W. (2006) Private legal orders: Professional markets and the commodification of financial governance, *Social and Legal Studies*, 15 (2), 209-235.

About the authors:

Jeanette Van Akkeren (PhD Qld), MIT (USQ), B'Bus (VU) researches in the fields of fraud, bribery and corruption, forensic accounting, professions theory, criminal profiling and information technology. Her publications include articles in the *Pacific Accounting Review*, *Public Money and Management*, and the *European Journal of Information Systems*.

Julie-Anne Tarr (PhD (Qld); LLM (Monash), J.D. (Cornell), BA (Wisconsin) researches in the fields of commercial transparency, accountability and disclosure with particular interests in corporate governance, complex project management, and insurance and risk. Her recent publications have included articles in the *Australian Business Law Journal*, *Accounting, Auditing and Accountability*, and the *European Intellectual Property Review*.