

## CAPI REVIEW 2009 – PRELIMINARY RECOMMENDATIONS

A summary of the draft recommendations from the statutory review of the *Commercial Agents and Private Inquiry Agents Act* are provided here for the consideration of stakeholders.

### Regulatory Reform

#### **Recommendation 1**

That NSW, possibly in conjunction with Western Australia, actively pursue nationally consistent licensing regimes for both commercial agents and private investigators through the Ministerial Councils and COAG.

Well, this is good and a step in the right direction. The Security industry is already doing this with COAG. Mutual recognition Act should be obeyed by the States and not ignored by belligerent States such as Vic & TAS -and now Western Australia itself. (Just read the WA Police website. They have their own 'pet' list of RTO's for training acceptance. Such activity is an obvious environment for corruption between the Police licensing officers and the RTO's. We do not want this to happen in NSW.

The Federal Attorney General should be consulted as he would be the logical Minister to oversee the National legislation for Private Investigators and Commercial Agents in Australia in line with the National Code of Practice for Investigators and Mercantile Agents in Australia. The national Code of Practice is the Industry Standard for Australia.

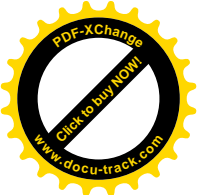
It will be noted that the National Code of Practice for Investigators and Mercantile Agents in Australia clearly states that all persons who carry on activities of Investigators and Mercantile Agents must be a member of a recognised Industry body and have the proper recognised qualifications with the provision for ongoing training and also to be issued with a National Practicing Certificate by the Australian Institute of Private Investigators, this is to ensure that compliance is properly adhered to. Any potential legislation that neglects to allow for compliance is flawed legislation.

#### **Recommendation 2**

That the CAPI Act be abolished and replaced with a new *Commercial Agents Act* to regulate commercial agents, to be administered by the Office of Fair Trading and incorporate the recommendations of this Review as appropriate.

Problem here is that Commercial Agents activities often involve investigation applications, investigation of persons and also surveillance, either to repossess goods or confirm a person's address and/or location of goods. So that means they will have to hold 2 separate licenses to cover these activities.

- 1). the proposed Commercial Agents License and
- 2). the proposed Private Investigation Licence, which we note further herein they wish to include under Security Licensing. That is not workable. Commercial Agents and PI work interrelates closely whereas Security work has nothing to do with Private Investigation work. Outside of Sydney, Private



Investigators and Mercantile Agents have to be able to do Investigations and Mercantile activities to be economically viable.

We believe that State licensing is completely out of date as companies have clients and branches in most states and it is an unnecessary burden to have to employ the services of Investigators and Mercantile Agents in different States. We should add here that the Police Minister should have nothing to do with the Private Investigation and the Mercantile Industry as per the NSW ICAC Inquiry which said that the Police should have nothing to do with the Investigation and Mercantile Industry.

The obsession by the Ministry for Police and the NSW Police Force to have control of the Private and Commercial Agents is obscene as the Police nor the Ministry for Police have anything to do with Private Investigations and the Mercantile Industry as in the first instance the Police are the only organisation that is empowered under the law to investigate criminal matters on behalf on the State and the Police have nothing to do with Commercial Investigations nor Mercantile activities.

### **Recommendation 3**

That the transfer of commercial agent regulation from the NSWPF to the OFT be completed by the end of 2010, including the transfer of licenses onto the Government Licensing System.

As above, the Investigation and Commercial Industries should not be controlled, overseen or regulated by the Ministry for Police as they are not the Ministry for Private Investigators & Mercantile Agents. As per the Australian Crime Commission who found that the Security Industry in all States was corrupt and to even think to place Private Investigators under a corrupt Security regime is to infer that our industry needs to be corrupted is totally abhorrent and anybody who is supporting this move for Private Investigators to be under a corrupt Security Industry as per the Australian Commission might be seen to support corruption in the Security Industry.

### **Recommendation 4**

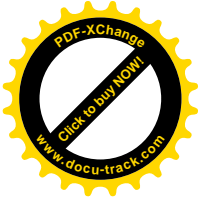
That private inquiry agents be renamed private investigators.

Does this mean that Private Investigators in other States can be called Private Detectives but not in NSW, again National Legislation is paramount and the sooner the better. Perhaps there is a move to force the Australian Institute of Private Detectives Ltd to remove Detectives from their name, this has been on the agenda of previous Police Ministers and Commissioners.

### **Recommendation 5**

That a new subclass be created under the *Security Industry Act* to regulate private investigators, and that:

- The current exemptions from licensing requirements, incorporating the proposed amendments to exemptions made by this Review, be carried across to the *Security Industry Act* for that subclass.



- The new subclass be exempted from the requirement under Section 29 of the *Security Industry Act* to display their licence at all times.

This is ridiculous as Security industry has nothing to do with PI work. The Security Act should ONLY cover Security industry not PI's.

In our view it is only being orchestrated by Police to enhance the already corrupted system that has evolved for the security industry. i.e. Only certain Representative Bodies are recognised, and only selected RTO's approved for training; mutual recognition for training blatantly ignored as well as many registered DEST RTO's who are approved to deliver training in all States. There are immediate unfair trade practice concerns as this will wipe out any representative organisation that does not cover both PI & Security personnel. If regulation is to take place then it should not be done by the Ministry for Police nor the Security Industry. Once again there must be National Legislation and this must be under the Federal Attorney General.

There is absolutely no point in having licensing without qualifications and there must be the ability for oversight of compliance not only with the subject licensing legislation and regulations, but also compliance with other laws operational and standards in Australia. This can only be done through recognised industry bodies responsible for on going training and the issue of a Practicing Certificate which will have the effect of properly weeding out from the industry those persons who refuse to conform with the proper minimum standards for the Investigation & Mercantile industry.

### **The Licensing System**

#### **Recommendation 6**

That the objectives of the Act are valid and should be maintained, with the exception of that in Section 3(b) of the Act – 'to provide for the licensing of persons carrying out, and persons carrying on business in relation to, commercial agent and private inquiry agent activities'.

At this stage the Institute reserves its opinion on this Recommendation

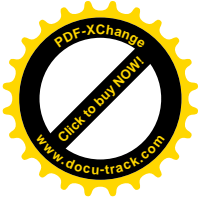
#### **Recommendation 7**

That a licensing system be maintained for commercial agents and private inquiry agents/investigators.

That is fine provided it is properly drafted and not corrupted as it is now and even more so under the new proposals. There must be proper consultation with the Investigation & Mercantile industries who have a vested interest on behalf of their clients and the public.

#### **Recommendation 8**

That operator licensing requirements be removed for debt collectors working in a call centre environment, as long as they are under the direct supervision of a licensed manager.



This is not acceptable as all personnel involved in debt collection activities must at least hold the proper recognised Qualification under the Australian Qualifications Framework.(AQF). Anybody with a grain of salt must know that in a call centre the staff have direct access to the debtor by phone and this more often than not leads to harassment of the debtor by staff at the Call Centre; one only has to ask any member of the public who has been contacted by staff from Call Centres in Mumbai as an example or for that matter by any Call Centre.

Why should Call Centres be exempt from qualifications to the rest of the industry? This was put forward by the big Call Centre representatives at the meeting with the Parliamentary Secretary to the Minister for Police on the basis that it was expensive to get the qualifications as the staff did not last long in the job.

This smacks of nepotism and cosy lobbying by large organisations who want to control the Mercantile Industry and the Ministry for Police seems to be supporting this potential proposition to the exclusion of all other people in the Mercantile Industry.

We recall quite vividly that this lobby group said that Call Centres were going to take over the Debt Collection industry and it appears that the Ministry for Police is going to facility this monopoly to the detriment of Small businesses and other larger companies who currently employ Mercantile Agents on a very satisfactory basis.

There again appears to be a lack of incentive to have any oversight of the Call Centre Industry nor compliance and to expect a manager to personally oversee in excess of 20-40 staff or even more is ridiculous. No doubt if proper consultations with the whole industry were to take place then perhaps a workable solution to the problems of the Call Centres could be effected.

However there must be provisions for all the staff in Call Centres to be a member of a recognised industry body and be subject to compliance with industry standards. We are presently in discussion with the Federal Government in relation to these issues and a compliance framework be established for all persons involved in any part of the Collection process in order to maintain credibility of the proposed National Consumer Credit Protection Bill 2009.

### **Recommendation 9**

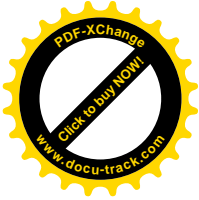
That the probationary period for commercial agents and private investigators should be waived at the discretion of the regulator for licensees who already possess the relevant required qualifications.

The institute agrees with this Recommendation

### **Recommendation 10**

That the probationary period should not be of a fixed length, but should last until training requirements are completed by the licensee.

The institute agrees with this Recommendation



### **Recommendation 11**

That the definition of 'supervision' for a probationary licence holder should be clearly defined in the *Commercial Agents Act* or accompanying Regulation, along similar lines as the definition contained in Section 19 of the *Security Industry Regulation*.

This seems to assume that there is going to be separate legislation for the Commercial Agents and the Private Investigation industry, surely this is presumptuous unless the decision has already been made and these suggested recommendations are a charade.

We would like to think that there will be further discussions with the Ministry for Police prior to any permanent decisions are made affecting our industry but on past records we are very sceptical. This seems to exclude the possibility of Federal legislation which the AIPD wholly supports and we note from the meeting with the Parliamentary Secretary to the Minister for Police that Federal legislation was anticipated but it was suggested that this might take a few years.

We fail to understand why it should take so long as if there is a will it could be accomplished in a very short space of time.

### **Recommendation 12**

That a new offence should be included in the *Commercial Agents Act* for permitting a probationary licensee to carry out any unsupervised commercial agent activity (in line with the definition recommended above).

We would support this providing that Commercial Agents and Private investigators are all under the same Federal legislation as previously stated.

### **Recommendation 13**

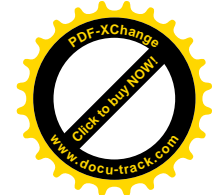
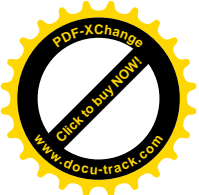
That a probationary licensee should be able to hold a master license (and hence subcontract), but only if they work under a 'competent person' who holds a full operator license. If they do not do so they will be guilty of an offence (as introduced by Recommendation 12).

We would support this, provided the Master Licences in these cases are also probationary and that Commercial Agents and Private investigators are all under the same Federal legislation as previously stated.

### **Exemptions from licensing requirements**

#### **Recommendation 14**

That it be clarified that all exemptions from operator licensing only apply while the person is carrying on commercial agent / private investigator activities in the course of their duties in their exempted profession.



We would support this providing that all the persons who carry on the activities of Commercial Agent & Private Investigator are properly qualified under national Australian Qualifications Framework. (AQF).

We sincerely hope that it is not the intention of the Ministry for Police to allow persons to carry on the activities as above in companies and government departments who do not have the proper qualifications.

We are reminded of one member of a Federal department who stated that they do not need to have qualifications as they were employed by the department, which prompted the reply that if a person was employed by the health department they did not need any qualifications to perform an appendectomy. This was followed with the words that we have a small problem, when in fact they had a very big problem.

It is imperative that all persons who carry out activities in the Investigation and Mercantile industries whether they are in the Private or Public sector must have the proper qualifications such as at a minimum under national Australian Qualifications Framework (AQF); and to also be a member of a recognised Industry body so that proper oversight and compliance can be implemented. This is consistent with the requirements of the Insurance Code of Practice as well as precepts set for the Financial Services Industry.

#### **Recommendation 15**

That both the *Commercial Agents Act* and the *Security Industry Act* be amended so that the Public Service and public authorities of any State, Territory or the Commonwealth are exempt from commercial agent and private investigator licensing requirements, in addition to their employees.

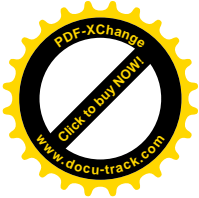
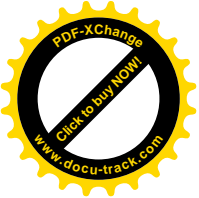
This assumption is on the basis that there are going to be two separate Acts for the Private Investigators and the Mercantile industries, however there appears to be no consideration that those persons employed in the Public Service and public authorities of any State Territory or the Commonwealth should have the proper qualifications as previously stated above with national Australian Qualifications Framework (AQF) and other laws, OH&S, Government directives etc., to perform the relevant work.

There must be proper qualifications and compliance in the Public Service and public authorities of any State Territory or the Commonwealth and any person carrying out Investigation or Mercantile activities must undergo ongoing training and be a member of a recognised Industry body and also be subject to the provisions of the National Code of Practice for Investigators and Mercantile Agents in Australia.

#### **Recommendation 16**

That the definition of debt collection in the *Commercial Agents Act* be appropriately worded to clarify that it includes the collection of debt purchased from a second party, but excludes in-house debt collecting.

This again presumes that there is going to be a separate Act for Mercantile Agents however if there is going to be Federal legislation or a combined Act that includes Investigators & Mercantile Agents then there must be proper



provision as a minimum, that persons hold the required industry national qualifications (under AQF and other laws, OH&S, Govt. directives, meet industry standards, Industry Code of Practice and other formal guidelines, etc) to perform the relevant work.

However, we completely fail to see why in-house debt collection should be excluded from the provisions of qualifications and compliance of industry standards as these persons would be dealing with the debtors and they must comply with the proper standards otherwise the whole system will fall apart.

It would make a mockery of the industry and would create a divided industry which would have the effect of forcing companies to collect their own debts without any proper compliance of any Industry Standards which would be to the detriment of the public which we presume that this proposed legislation should be designed for the protection of the public at large and would lead to very unsavoury practices and generate a massive amount of complaints from the Public.

This then begs the question as to who is going to investigate these complaints as it appears that there seems to be no provisions in these recommendations for the handling of complaints for either Investigators or Mercantile Agents and if the recommendation 16 goes ahead persons employed in companies collecting debts. Not to mention that all major companies will outsource these services overseas to low labour cost countries such as India in order to avoid legal compliance. This will lead to unsurpassed ignorance of Australian laws, industry standards, business standards and illegal behaviour perpetrated against Australian consumers.

### **Recommendation 17**

That loan managers, loan brokers, loan servicers and real estate agents should not be subject to commercial agent licensing.

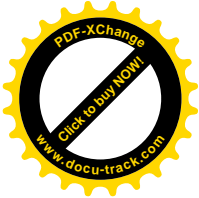
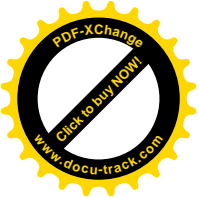
Once again there seems to be a compelling need to exempt all sorts of persons who might in some sense be involved in debt collecting or the overseeing of debt collection to persons to whom they have lent money for goods or other assets without any provisions for compliance with Industry Standards such as the National Code of Practice nor the proper qualifications under AQF and other laws, OH&S, Government directives, and other formal guidelines, nor to be a member of a recognised industry body..

### **Recommendation 18**

That debt factoring facilities and invoice discounting facilities be specifically exempted from the Act, where the following definitions apply:

“**debt factoring facility** or **invoice discounting facility** means a financing facility involving the conditional assignment of debts by a client to a financier on a continuing basis”

This assumes that “debt factoring facilities” and “invoice discounting facilities” will not be collecting any debts if there are any defaults and that these persons or companies offering the above mentioned facilities would not be



subject to proper Industry standards and compliance, Industry Code of Practice and other formal guidelines.

We would expect that further discussions could take place regarding this recommendation with regard to exploring the specific activities of these specialised providers.

### **Recommendation 19**

That the exemption for authorised deposit taking institutions be extended to cover all financial services organisations currently regulated under the *Corporations Act* and/or the *Financial Sector (Collection of Data) Act 2001* (Cth).

We would have no specific objections at this time providing that as a minimum, they must hold the required industry national qualifications (under AQF and other laws, OH&S, Govt. directives, Consumer Protection law, meet industry standards, Industry Code of Practice and other formal guidelines.

### **Recommendation 20**

That smash repairers and hire car companies be exempt from the *Commercial Agents Act* when acting in a recovery capacity for repairs or hire car charges associated with a vehicle repair insurance claim.

Again there seems to be a concerted campaign to exempt persons involved in the collection of debts and now the smash repairers and hire car companies are being selected for exemptions. The relevant question is why? Surely they are making demands on debtors as this is the only way that they can collect the debts, they should be subject to the same compliance and standards as licensed Mercantile Agents and have the required industry national qualifications under AQF and other laws, OH&S, Govt. directives, meet industry standards, Industry Code of Practice and other formal guidelines, and be a member of an Recognised Industry Body.

The alternative is for them to engage the services of a Mercantile Agent who is licensed and abides by a Code of Practice and complies with the relevant qualification requirements.

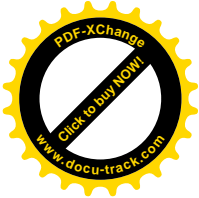
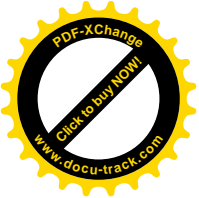
### **Recommendation 21**

That the definition of 'Investigation of persons' under the *Security Industry Act* be restricted to 'Any activity on behalf of a second person (not being his or her employer) that involves finding a third person, or investigating a third person's business or personal affairs WITHOUT THEIR WRITTEN CONSENT'.

We repeat that this is unworkable. This is ridiculous as Security industry has nothing to do with PI work. The Security Act should ONLY cover Security industry not PI's. Further, that such activities as exemplified above, may be part of a Commercial Agents' work activities also, so it cannot work.

What is this nonsense that Private Investigators be given the right to only make inquiries on behalf of a second person (not being his or her employer) that involves finding a third person, or investigating a third person's business





or personal affairs and then saying that they are unable to have access to information to make such inquiries. This is similar to Recommendation 44. Why must WITHOUT THEIR WRITTEN CONSENT' be inserted in any potential legislation?

This is tantamount to saying to a carpenter whom one has engaged to build some cupboards that he is not allowed to use a hammer, nail, screw or saw, one would be the laughing stock in the industry and probably qualify for a place in Ryde Psychiatric Hospital.

### **Recommendation 22**

That an exemption be introduced for any person whose duties when employed by a licensed commercial agent or private investigator consist of no more than office based clerical or secretarial work.

This is on the provision that they will never contact or answer the phone to give the debtor information or answer questions about the alleged debt. This one could only have been dreamed up by persons who have no understanding of the Investigation & Mercantile Industry as most of the persons engaged in the industry are small businesses where everybody works on every stage of the Investigation & debt collection process. The mind boggles at the idea that Investigators & Mercantile Agents have the resources to employ clerical and secretarial staff, nearly every Investigator & Mercantile Agent would have tears in their eyes with laughter.

Anyone employed in the Investigation & Debt Collection Industry must hold the required industry national qualifications under AQF and other laws, OH&S, Govt. directives, Consumer Protection law, meet industry standards, and other formal guidelines and be a member of a Recognised Industry Body as per the National Code of Practice for Investigators and Mercantile Agents in Australia.

### **Recommendation 23**

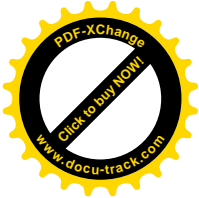
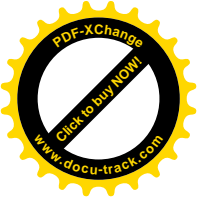
That the exemption from licensing for persons conducting disciplinary investigations in the public service be removed.

We would support this providing only that these persons be required to hold the necessary industry national qualifications (under AQF and other laws, OH&S, Govt. directives, meet industry standards, Industry Code of Practice and other formal guidelines, and be a member of a Recognised Industry Body as per the National Code of Practice for Investigators and Mercantile Agents in Australia.

### **Interstate and overseas licensing**

#### **Recommendation 24**

That offshore call centres be allowed to operate in NSW without regulation under NSW commercial agent legislation, if employed or subcontracted by an Australian company and with a specific clause in their contract agreeing to



abide by the ACCC/ASIC *Debt Collection Guidelines for collectors and creditors* and that the contract would be cancelled if the Guidelines were breached.

This is inadequate. This is being reviewed under the current Draft National Consumer Credit Protection Bill 2009, by Treasury.

Such overseas persons can be exempt from Licensing provided they hold the appropriate Australian Qualification under the AQF to work in Australia as AQF is the educational benchmark already applied by Dept of Immigration and comply with industry standards, Code of Practice etc as well as ACCC/ASIC *Debt Collection Guidelines for collectors and creditors which is included in the National Code of Practice for Investigators & Mercantile Agents 2008*.

Also if there was a breach by overseas collectors, there is no compliance provision or statutory penalty provision for the perpetrator nor any recompense or remedy process for the consumer.

The Australian company would need to be licensed, and as 'Intermediary' for financial institution or 'Head Contractor' and responsible for the activities of the engaged overseas personnel as well as provisions for prosecution against them and the overseas personnel, if any breaches occurred.

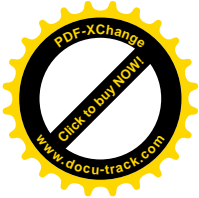
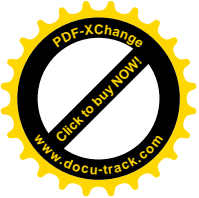
### **Recommendation 25**

That commercial agents based interstate be required to be licensed in NSW if 'carrying on business' in NSW, where carrying on business for an organization is specifically defined along the lines of:

- having property related to its business within the jurisdiction, or a fixed or certain place of business within the jurisdiction from which it conducts business
- having agent or agents within the jurisdiction who are authorised to conduct the company's business on its behalf
- carrying out or performing physical acts through human instrumentalities within the jurisdiction, and/or
- performing any such physical acts systematically and regularly with a view to profit.

This would be almost impossible to investigate as there are no powers currently contemplated to allow properly licensed inspectors to enter the premises of potential companies to check if the provisions of the proposed Act are being complied with (recommendation 25)

This must include mercantile agents that are engaged by Commonwealth Agencies to collect debts in all States and not be allowed to just rely on the 'delegation' provision' in Public Service related legislation and thus avoid all licensing requirements, notwithstanding they are private firms engaged in commercial activities but on behalf of the Federal Government. As an example Centrelink, Child Support Agency & State Debt Recovery Office etc. However, this recommendation 25 might be in breach of the Australian Constitution due to the fact that it could be deemed to be in contravention of free trade between the States. It would also lead to all other States enacting



the same provisions which would mean that companies would have to have a multitude of licences.

### **Licensing administration**

#### **Recommendation 26**

That a legislative requirement be introduced for all advertising material for commercial agents and private investigators to clearly display the name and master license number of the advertiser.

We see no particular problem to this other than that any public available search information relating to the Licensee be restricted with no address, contact or other personal details to be disclosed to the enquirer.

#### **Recommendation 27**

That the *Commercial Agents Act* specify that a licence is to be granted within 60 days or be considered refused, with subsequent rights for the applicant to appeal to the ADT.

This is assuming that there is going to be separate legislation for Mercantile Agents and Private Investigators. Can we assume that the decision has already been made as none of these recommendations have been discussed nor has the Australian Institute of Private Detectives Ltd been consulted other than at the meeting with the Parliamentary Secretary to the Minister for Police.

#### **Recommendation 28**

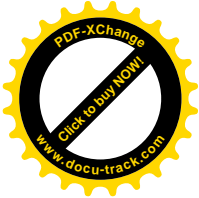
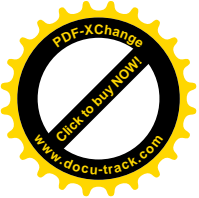
That equivalent provisions to Section 29(3) and Section 15(6) and (7) of the *Security Industry Act* be included in the *Commercial Agents Act* to clarify that criminal intelligence information can be considered in licensing decisions, without being disclosed to the applicant or as part of review proceedings.

All reasons for refusal should be disclosed to the applicant with no exceptions.

#### **Recommendation 29**

That NSWPF and OFT develop a model for continued police involvement in the probity assessment of commercial agent licensees, in particular through the exchange of criminal intelligence information as appropriate.

Under the previous Act for Investigators and Commercial Agents there were provisions for the Court to issue a licence providing that the applicant was cleared by the Police after having checked their Criminal record, we see this as not a problem however we fail to see the necessity to have the fingerprints taken for allegedly identification purposes and to quote one ex-police officer, at the meeting the Parliamentary Secretary to the Minister for Police said that it was to eliminate private investigators from crime scene investigations.



Anyone who swallowed this absurd proposition also needs to be committed to a place in Ryde Psychiatric Hospital. Police would never let a commercial investigator anywhere hear a crime scene nor a Private Investigator.

### **Recommendation 30**

That it be clarified that Section 12 of the *Criminal Records Act 1991* does not apply to the application for a licence under the *Commercial Agents Act*.

This is assuming that there is going to be separate legislation for Mercantile Agents and Private Investigators. Can we assume that the decision has already been made as none of these recommendations have been discussed nor has the Australian Institute of Private Detectives Ltd been consulted other than at the meeting with the Parliamentary Secretary to the Minister for Police.

### **Recommendation 31**

That the *Commercial Agents Act* not require a notice of cancellation, or the ability to make written submissions, where the cancellation is mandatory.

Any license cancellation recipient should be advised in writing of all reasons for such a decision and allowed their common law right to challenge such a decision. If this was enacted it would take away any right to fair and open hearing and to be challenged in a properly constituted Court of Law.

## **Miscellaneous**

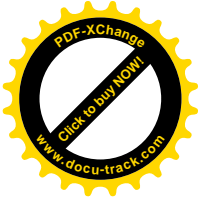
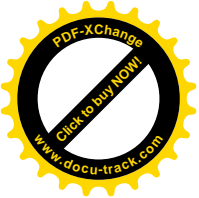
### **Recommendation 32**

That training requirements for commercial agents and private investigators be reviewed by the regulator in conjunction with peak industry associations, to determine their relevance. Consideration should also be given to the cost and availability of training, particularly in rural areas.

This could be easily achieved as per the National Code of Practice of Practice for Investigators and Mercantile Agents in Australia 2008 where provisions already exist for ongoing training being mandatory. This is achieved by the issue of a National Practising Certificate which would fund the ability to conduct training in rural areas as well as overseeing compliance and the prosecution of offenders in relation to the National Code of Practice as well as to breaches to any Federal Act for Investigators and Mercantile Agents. Persons in rural areas must not be excluded from the requirement to be suitably qualified and the provisions of ongoing training. This is a breach of OH&S law.

### **Recommendation 33**

That consideration be given, in consultation with ACCC and ASIC, to incorporating a Code of Conduct (possibly the ACCC/ASIC *Debt collection guidelines for collectors and creditors*) into the legislation, with clear penalties for breaches of the Code.



A Code of Conduct is a complete nonsense as it can not be enforced, however a National Code of Practice is enforceable as it is the industry Standard and must be taken into account by the Courts in consideration of any breaches such as fines etc.

We must refer you to the National Code of Practice for Investigators and Mercantile Agents in Australia, which was consulted, reviewed and adopted in September 2008.

The debt collection provisions and guidelines in recommendation 33 are already incorporated in The National Code of Practice for Investigators and Mercantile Agents in Australia 2008.

### **Recommendation 34**

That a new clause be inserted into the *Commercial Agents Act* to specify that debtors must be notified of any overpayments made, unless the reasonable cost to the debt collector of processing the refund would exceed the amount of the overpayment.

Once again this assumes that there will be separate legislation in the industry for Investigators and Mercantile Agents.

However if there was to be Federal legislation for Investigators and Mercantile Agents then we would support recommendation 34

### **Recommendation 35**

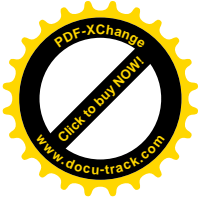
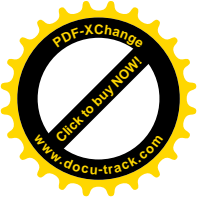
That the qualifications of auditors of trust accounts for commercial agents be broadened to include members of a Professional Accounting Body as defined under the *Australian Securities and Investment Commission Regulations 2001* (such as CPA Australia, the Institute of Chartered Accountants in Australia and the National Institute of Accountants) who hold a Public Practice Certificate with one or more of those bodies.

The Institute would support this recommendation for inclusion in Federal legislation, but qualification standards must extend to all 'licensing exempt' persons that engage in Commercial Agent and or Investigation activities, in accordance with National Code of Practice for Investigators & Mercantile Agents in Australia and Financial Services Industry precedents.

### **Recommendation 36**

That a restriction on debt collectors charging costs to debtors be maintained, however that longer term consideration be given to transferring this restriction to an Act with broader coverage such as the *Fair Trading Act* so that all agencies collecting debts, whether licensed CAPI agents or not, have the same conditions applied to them in this regard.

This is a very difficult problem to simply resolve without extensive consultation with the industry and by this we mean not the vested interests of the major



players such as the Call Centres but the vast majority of small businesses in the Industry.

There can be no doubt that anybody engaged in the Debt Collection and Investigation Industries must have the Qualifications and be subject to proper Compliance and adhere to the National Code of Practice for Investigators & Mercantile Agents in Australia.

This must apply to companies and government departments both the public and private sector.

### **Recommendation 37**

That the restriction on trust accounts for commercial agents earning interest be removed.

The Institute would support this in both the Federal legislation and any temporary legislation for Investigators and Mercantile Agents.

In some circumstances Private Investigators also operate Trust accounts and provision should also be made for them.

### **Recommendation 38**

That the Office of Fair Trading consider the option of removing the trust account provisions in the drafting of the *Commercial Agents Act*.

This again assumes that there are going to be separate legislations for the Investigators and the Mercantile Agents.

The Institute has a firm belief that this must be kept in tact for Federal and State legislation It needs to be made specific and variable, subject to the work application.

### **Recommendation 39**

That a note be added into the *Commercial Agents Act* stating that licensees are also subject to offences under various other State and Commonwealth laws, including the *Fair Trading Act* and the *ASIC Act*.

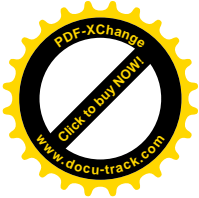
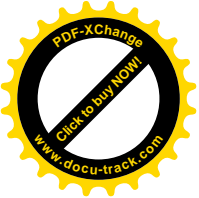
This is completely unnecessary as under section 109 of the Commonwealth of Australia Constitution Act, which provides that:

When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail and the former shall, to the extent to the inconsistency, be invalid.

### **Recommendation 40**

That a new offence for misrepresentation of services be introduced into the *Commercial Agents Act* and into the *Security Industry Act*, along with a requirement for private inquiry agents to provide all prospective clients with a document clearly articulating the services that they are able to provide.

It can be very clearly seen in the National Code of Practice for Investigators & Mercantile Agents in Australia 2008 that when a person who has attained the



proper qualifications under the code of Practice they must be issued with a National Practising Certificate which sets out the area's of expertise of the Licence holder.

We cannot emphasise too strongly that as the Australian Crime Commission has recently as last week, found that the Security Industry has been infiltrated by Criminals and we quote the article below as we are extremely opposed with having anything to do with the Security Industry:

### Criminals infiltrate security industry

- Geesche Jacobsen and Dylan Welch
- May 24, 2009

The private security industry throughout Australia has been infiltrated by criminals who deal in drugs, rot the tax and welfare system, and intimidate competitors for a greater share of the market.

An 18-month investigation by the Australian Crime Commission had found the industry was plagued by serious issues that were outside the reach of normal law enforcement, commission chief executive John Lawler said.

A detailed report on the industry, due to be released to the commission's board next month, showed problems were prevalent "right across the industry" and in every state and territory, he said.

Problems included significant organised crime links, the trade in illicit commodities such as drugs and drug-making chemicals, organised theft from the businesses that security companies are paid to protect, and money laundering.

Many hid the money through international trade and legitimate business links, Mr Lawler said.

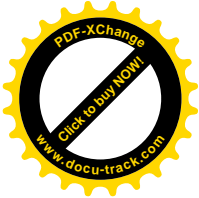
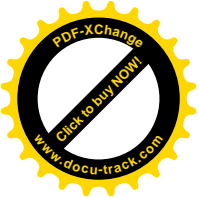
Elements of the industry were engaged in tax evasion or welfare fraud and failed to comply with their requirements under workers' compensation, superannuation and workplace regulations. Some employed staff without the correct visas; others circumvented or manipulated industry regulations.

Legitimate businesses had found it difficult to compete against operators who breached the law by paying cash to their workers, or paying below-award wages, Australian Security Industry Association chief Bryan de Caires said.

The association, which represents about half the industry, had conducted audits and expelled members who failed to comply.

"If someone is not doing the right thing, we want them to be caught out," Mr de Caires said.

About 5000 security businesses operate across Australia.



In NSW six years ago a move to fingerprint all applicants for licences flushed out criminals from the industry. In 2007, when the Security Industry Register reclassified the licences and increased the checks on applicants, more than 4650 failed to renew their licences. About 2000 of those were holders of class 1 licences, which are required for work as a doorman at a licensed venue.

The Australian Crime Commission investigation had looked extensively into the business links of those operating in the industry, Mr Lawler said.

"There is nothing new in one sense about following the money," he said. "But what we are seeing is a coalescing of legitimate and illegitimate. The real sophistication comes in understanding what's legitimate and what's illegitimate."

The commission's inquiry has generated more than 400 reports about individuals, companies and the methodology employed by criminals in the industry.

They have been sent to state and federal police, and departments such as the Tax Office, Centrelink and others, who would act on the intelligence.

In July the Council of Australian Governments agreed to introduce national regulation and licensing of the industry to improve probity and regulatory standards by next year.

The commission said the "vast majority of companies and individuals" in the industry were legitimate.

#### **Recommendation 41**

That commercial agent and private investigator fees be indexed to inflation to allow for increases in costs charged by the RTA and CrimTrac.

We again must refer to the National Code of Practice for Investigators & Mercantile Agents in Australia 2008 which sets out the benchmarks for Debt collection and Investigations and that an Actuary be retained to give an opinion as to the charges that should be charged to remain economically viable. Any increases would be on the recommendation of the Actuary.

It would be ridiculous in the extreme to set in legislation a scale of fees and could be in contravention of the ACCC legislation.

The Institute fails to see what a government department indexes charges has anything to do with the Private sector, least of all to the Investigator and Mercantile Industries.

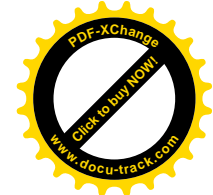
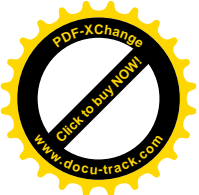
#### **Recommendation 42**

That fingerprinting requirements be removed for commercial agents.

The institute would support this but it must also include Private Investigators the reasons as previously stated in these recommendations.

We have previously stated that the Private Investigators must have nothing to do with the Security Industry.





Police control over the PI industry can only lead to corruption. Police can thwart or influence the Investigation process (in any jurisdiction in NSW) at their will. This is unacceptable. Refer NSW ICAC Inquiry 1992 where Adrian Roden QC recommended that Police should never have anything to do with the Private Investigation industry.

### **Recommendation 43**

That the requirement to provide a 9 digit license number on the phone should not be transferred to the new *Commercial Agents Act*.

This is absolutely ridiculous and totally unnecessary, what the hell would a client of a Private Investigator know about a 9 digit licence number and the Institute would support this ridiculous requirement being dispensed with for both Private Investigators and Mercantile Agents.

### **Recommendation 44**

That no additional access to information be granted by virtue of a commercial agent or private investigator licence.

This is tantamount to saying to a carpenter whom one has engaged to build some cupboards that he is not allowed to use a hammer, nail, screw or saw, one would be the laughing stock in the industry and probably qualify for a place in Ryde Psychiatric Hospital.

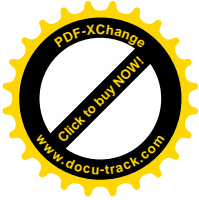
The Institute has on a number of occasions made submissions to the NSW CAPI Unit in relation to the right of clients of Investigators to be equal before the law, however even though stated cases in the High court have confirmed this the CAPI and the Ministry for Police has completely ignored the high court rulings and we are now expected to believe that the ministry for Police are going to look after the interests of the Private Investigation and the Mercantile Agents industry. One could say Pigs might fly and then they want to put the Private Investigators under the Security Industry.

We have been told that Private investigators will not be allowed access to information and when we asked where this edict came from we were told that they could not tell us.

The Institute can only presume that it comes from the Police Association or stems from the Inquiry by Adrian Roden QC in the report handed down in 1992 which said that the Police should have nothing to do with the Private Investigation Industry.

This inquiry also found that Solicitors, Barristers, Insurance companies, members of finance Companies, Police officers and other related persons, dealt in corrupt conduct.

However, if this is the reason why Private Investigators and Mercantile Agents are denied access to information on behalf of their clients so that they may receive a fair and equal opportunity to put all the evidence before the Courts, then this charade must cease at once or they should consult with us to find an equitable solution.



#### **Recommendation 45**

That the Register of Licences for commercial agents and private investigators be made more available to the public, through an expanded search system such as that used on the OFT website or a published Register list as in WA.

The Institute believes that there be a restriction to - confirmation only, that a person or firm holds a license or not - nothing more.

#### **Recommendation 46**

That the requirement for repossessed vehicles to be reported to police by repossessors within 24 hours not be reintroduced.

This is not acceptable as Mercantile Agents who carry out repossessions are occasionally required to obtain a Court order for the repossession of various goods and the requirements are that they have to inform the debtor of such Court order, however nearly all repossessions include such things as Race Horses, Lear jets, Trucks, Motor Vehicles, Trailers, Motor Cycles, Boats, Yachts and Houses amongst other things.

The Police have a hard enough time trying to investigate matters now without the unnecessary job of trying to find any of the abovementioned items that are repossessed when notification to the Police would save all the time and effort of their time taking statements for alleged stolen property when in fact it has been repossessed.

#### **Recommendation 47**

That Section 39(c), Section 40(1)(a), Section 41(1)(C)(iii), and Section 41(3) of the *Roads and Traffic (Driver Licensing) Act* be amended to include licences under the *Commercial Agents Act*.

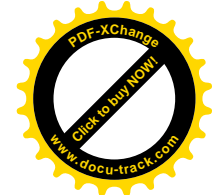
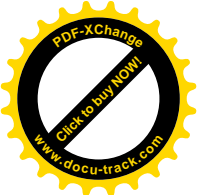
This is ridiculous, what the hell does the RTA have to do with the Private Investigation and Mercantile Agent Industry or is this aimed at trying to involve another government department in the Private sector. This smells like big brother knowing no bounds to shackle to innocent public to enlarge their own departments by interfering too much in the Private industry. We rest our case.

#### **Recommendation 48**

That the minor drafting amendments which had been proposed for the CAPI Act (as contained in the table at Appendix D) be taken into consideration in the drafting of the *Commercial Agents Act* and the amendment of the *Private Security Act*.

We might refer to this Recommendation as the Phantom Recommendation as we have apparently been denied access to the Annexure D.

We are fearful of what it might contain but on the other hand from past experience in dealing with the Ministry for Police we have no doubt that these recommendations that we have been asked to make submissions on may be just for the purpose of saying at a later date that the industry was consulted,



when in fact the decisions have already been made and our submissions are or will be ignored.

With these submissions, we will probably raise the ire of the Ministry for Police but on the other hand we believe that it is important to tell it as we see it from the feedback that we have received from our industry members.

John Bracey.  
President.  
Australian Institute of Private Detectives Ltd  
31/.9/09