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## Australian Institute of Private Detectives

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CAPI Act Review  
The Director General  
Ministry for Police  
Level 3 201 Elizabeth Street  
Sydney NSW 2000

Dear Sir

### Re Review CAPI Act

We are in receipt of your letter regarding the above and please find enclosed our submission.

As you would be aware we made a submission on 9/11/05 and we again submit this for your consideration as we believe that there are important issues that are still not addressed.

We also include a copy of our submission to the Privacy Commissioner as we again believe that the issues canvassed in that submission are also relevant to your review of the current CAPI Act.

In addition we and our members are strongly of the opinion that due to the nature of our industry and the need to conduct investigations and the collection of debts in all other States and Territories that National legislation is the preferred option.

The current Act is not working properly as the staff in the CAPI unit do not have a proper understanding of our industry and how it works, as an example when a person has acquired a Cert III Investigative Services they are required to be employed by a Private Investigation company which is virtually impossible as all work carried out for an Investigation company is done by subcontract.

We would draw your attention to the following although we have not extracted the current figures they are certainly alarming:

### **BAD DEBTS**

**The figures for the Partnerships and the Companies were taken from the statistics tabled in Parliament from the ATO.**

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Between the end of the financial year of 1997 and the year 2002 there were between 11,700 and 10,979 partnerships and they obviously had an accrual accounting system and they wrote off bad debts totaling \$864,637,280m. If we divide this figure by 6 we end up with approximately \$144,106,213 average write-off of bad debts per annum. If we then divide that by the average number of partnerships say 11,000 there would be write-off of approximately \$13,100 per partnership.

We now look at the bad debts in relation to companies and between the financial years ending 1997 and 2002 there were between 33,000 – 40,000 companies over that 6 year period wrote off approximately \$22,370,070,873. And in 2002 financial year bad debts of \$5,823,415,533 was written off. If we divide that by 40,000 we end up with an approximate figure of \$145,585 per company.

Both these partnerships and businesses worked on an accrual accounting system. In other words they paid the GST on their invoices and the following year if they didn't get paid they claimed back the bad debts and GST.

We now take from the information from the Australian Bureau of Statistics who indicated that there was approximately 1,233,200 small businesses, these small businesses work on what we call 'a cash accounting basis' and that means that they only pay tax and the GST on the monies that they collect.

If we take these small businesses, and they are larger than the partnerships we could then say approximately that if each small business did not collect say \$10,000 in bad debts in any given year that would amount to about \$12Billion per annum and over a 6 year period that would account for approximately \$72Billion. That together with the 40,000 companies and that's the \$22Billion, plus the \$860Million, written off by partnerships, we have a figure pretty much close to \$100Billion over a 6 year period, of which company tax has not been collected nor has the GST.

It would appear that these figures are an escalating figure in relation to the 40,000 companies and any downturn in the business also means that the smaller businesses have an even larger uncollectable debts so the Federal Government is missing out on the company tax on the best part of \$100Billion together with the \$10Billion worth of GST.

It will be noted that these figures from 1997 for the 40,000 companies have gone from in 1997 \$1.79Billion, 1998 \$2.316Billion, 1999 \$3.369Billion, 2000 \$4.988,Billion, 2001 \$4,079Billion, 2002 \$5,823,Billion so the escalating figure will obviously accrue to huge amounts of money that the government is not collecting. It must be assumed that the small businesses will also not be able to collect an escalating amount of bad debts

### **Criminal Jurisdiction**

There were 204,000 people according to the Chief Magistrate Graeme Hensen in 2007 who went through the NSW criminal system. If we multiply that by 4 for the average family, mother, father, son and daughter and multiply by 4 again for the fixed term of the NSW Parliament we arrive at a figure of 3.2 million who are affected by a family member going through the NSW criminal system over a 4 year period. The current

system denies a Private Investigator access to information to be able to locate witnesses etc for criminal matters to be able to prepare a proper defence on behalf of their clients.

It must be noted that the AIPD were denied any representation at the time of the working party was considering the current legislation and in fact when the writer approached a representative on the working committee Warren Mallard the writer was told that they had been sworn to secrecy and he could not tell the writer anything, the writer was thus unable to communicate anything to his members.

It seemed extremely unusual to be sworn to secrecy as our members were led to believe that all matters that were to affect them would be properly considered by the department.

It is essential that Private Investigators and Debt Collectors have access to information to enable them to locate witnesses and debtors. It can be seen that the inability to locate people to for the service of process to have the matter tested in court to be able to collect debts causes the loss of substantial revenue to the State. Notwithstanding the obvious problem for defendants in criminal matters being denied proper, fair and equal justice.

#### **National Code of Practice**

We would draw your attention to the National Code of Practice for Private Investigators in Australia which can be viewed or downloaded from our web site [www.aipd.com.au](http://www.aipd.com.au) and also the proposed amendments. These amendments will make it much easier for the transition from state legislation to federal legislation.

The Industry across the nation is now undergoing national qualifications which is nearly completed which now makes the industry able to be recognised as being competent to compete in the ever demanding area's that our members operate.

As can be seen from the National Code of Practice it is essential that there is ongoing training as is required in other professions such as Solicitors, Accountants, Surveyors, Teachers etc and the Police. This will open up opportunities for various departments to outsource their investigations and debt collecting to the professionals in our industry and dare we say it but the Police might also consider outsourcing some investigations to our qualified investigators.

It is not often recognized but about 55% of our industry are probably ex Police and this would have the enormous effect of releasing Police to spend more time on the more urgent matters than on the mundane investigations, but this could be properly discussed at a later date.

We would draw your attention again to our web site [www.aipd.com.au](http://www.aipd.com.au) where you can view or download the draft federal legislation for the Private Investigation Industry, whilst this is a draft it will act as a framework to develop the final draft in consultation with all interested parties.

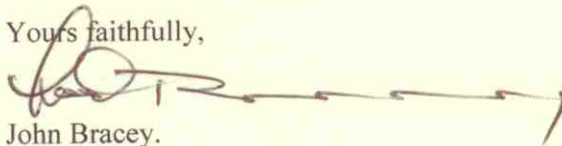
In the lead up to the legislation in 2004 the department in its deliberation came to the conclusion that there were no Industry organisations that were capable of running the Industry so the Ministry for Police was the only one capable of doing so.

It is our submission in light of the ability of the industry to draw up draft Legislation for Federal legislation and implementing a National Code of Practice that this indicates that there is a maturity to administer the industry, bearing in mind that there will always be Ministerial oversight and reporting to the Minister (whichever Ministry has responsibility).

It has been noted that there has not been any consultation in the process of this review and we would have thought it might have been of considerable assistance to the Ministry and the Industry to have held some sort of collective meeting where all persons with an interest to take part in an open forum, perhaps it is not too late for this to happen.

We enclose a copy of our submission to the Privacy Commissioner as well as our submission to the Ministry of Police re CAPI Regulation 2005, A copy of the proposed Code of Practice amendments and a copy of the proposed draft legislation for Federal legislation

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'John Bracey', with a long horizontal flourish extending to the right.

John Bracey.  
19/6/08