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## Australian Institute of Private Detectives

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11/7/11

The Hon. Michael Gallacher MLC  
The Minister for Police & Emergency Services  
Parliament House  
Macquarie Street  
Sydney 2000

Dear Minister.

### **Commercial Agents and Private Inquiry Agents Act 2004**

Since our last meeting a few years ago, a lot of water has passed under the bridge, however as the new Minister for Police I would like to take this opportunity to update you on the progress of the Australian Institute of Private Detectives Ltd.

As can be seen from our website we have made a number of submissions to the previous Ministry for Police and these are recorded on our website.

One of the most important things that we have instituted is a National Code of Practice for Investigators and Mercantile Agents in Australia, the consultative process commenced in 2005 and was subsequently ratified on the 16/12/05. A further period of consultation was put into place in 2008 and amendments to the National Code of Practice for Investigators and Mercantile Agents in Australia were finally adopted on the 15/9/08, the updated Code of Practice is posted on our website. The Code consultation process was extensive and open to all stakeholders and involved the NOHSC, all Industrial Relations Ministers and OH&S Authorities in Australia.

There is often a misunderstanding between a Code of Practice and a Code of Conduct, and perhaps we should explain in simple terms the difference between the two.

**A Code of Practice** is in effect a national standard which is built on industry standards, IR and OH&S legislation and is a mechanism designed to provide some assurance that industry participants meet 'best practice'. It can be viewed by the courts as a national standard for an industry. Specifically, law courts look upon a Code of Practice as the standard expected from an industry.

**A Code of Conduct** is in effect a voluntary standard relating to propriety and conduct alone and limited to a specific company and/or entity and has no effective jurisdiction in a court of law.

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As an illustration between the two i.e, A Code of Practice and A Code of Conduct is for instance when a person is in breach of a Code of Practice and is placed before the court, the court looks at the industry standards to assess whether there has been a breach and if so has the power to make a decision based on the severity of the breach. As can be seen from the National Code of Practice for Investigators & Mercantile Agents 2008, the industry is committed to continuous improvement, ongoing training and professional development and all of our members are required to hold national qualifications and we believe that we have reached a stage where consideration should be given to our industry to be self-governing. The government always has the power to pass any legislation as a sovereign government in the interest of good governance for the people of New South Wales and if our industry in any way falters or does not live up to expectation of the people and the government, then the government has the power to enact further legislation to take control of our industry. Licensing has failed all parties to date and has not provided any assistance to the industry, clients, stakeholders or the public. The industry Code of Practice also provides within it, a National Dispute Resolution Scheme (DRS) which has never been available to all stakeholders previously.

There are many advantages for allowing our industry to be self-governing and that it would relieve some potential 73 staff see **Annexure A** from the police directorate to concentrate on solving crime and not overseeing upon the investigation or commercial agency industry. There would be no cost to the government in administration costs.

Something that we feel compelled to bring to your attention is a copy of the Security Licensing and Enforcement Directorate State Crime Command. See **Annexure A**. We would prefer to the recent advertisement in the Sydney Morning Herald with a closing date of Friday, 8 July 2011 in relation to the;

New South Wales Police Force,  
Corruption and Risk Officer,  
Job Classification Clerk Grade 7/8,  
State Crime Command, Specialist Operations  
Employment Status: Permanent full-time  
Suburb: Parramatta,  
Vacancy Ref; NSWPF 11/200

Job Description:

The Corruption Prevention & Risk Management Officer is responsible for undertaking research, developing strategies and educating stakeholders to prevent corrupt and noncompliant conduct within the security, commercial agent and private inquiry agent industries. The position is responsible for assessing internal and external risks to inform the development, implementation and review of SLED's regulatory systems, processes and activities.

This body appears to employ some 73 staff and the obvious question that springs to mind is how many complaints are received in relation to the Commercial Agents and Private Investigators in comparison to the Security Industry. As previously stated in our submissions to the Ministry for Police, the Police should have nothing to do with

the private investigation & commercial agency industry. We have covered this later in this submission.

As you are well aware from our previous discussions some years ago regarding our industry and that we should be self-regulating and definitely not under the Ministry for Police but under the Attorney General's department and in support of this you will recall no doubt that we did a draft of Private Investigator's Bill as early as 1992 which has subsequently been updated.

It will be noted in the report from the ICAC inquiry in 1992 that the Police should have nothing to do with the Private Investigation industry, however the previous Labour government and the Ministry for Police completely ignored the findings from the ICAC inquiry into release of alleged Confidential Government Information from government departments to a whole range of groups and organisations including solicitors and insurance companies, commercial agents and private investigators.

It is our opinion that the Commercial Agents and Private Inquiry Agents Act 2004 and Regulations 2006 needs to be properly reviewed for the following reasons:

- (a), the act does not seriously take into account transparency and unbiased investigations in government departments and statutory authorities.
- (b), the act virtually prohibits any qualifications for any investigators in any government department or statutory authorities.
- (c), we believe that in (b) above it is contrary to federal legislation and requirements. See **Annexure B**.
- (d), in reality, the act virtually prohibits any investigator from actually conducting an investigation on behalf of a client or a corporation.
- (e), again in reality the act virtually compels a commercial agent to have a private investigator's license to conduct an investigation to locate a debtor, this is despite the fact that the commercial agent is licensed to collect debts.
- (f), a licensed private investigator under the act has in fact no more rights than an ordinary citizen. Why do we have to be licenced to be able to the same thing that any ordinary citizen can do?
- (g), allowing the Police Ministry and the Commissioner of Police to have effective control over private investigators or commercial agents is a complete abomination.
- (h), whilst private investigators were primarily involved in insurance work such as factual investigations and surveillance in the Workers Compensation and Third Party claims area's, however this no longer basically exists in New South Wales.

- (i), under the existing Act, private investigators are denied the right to investigate on behalf of a client in a criminal matter for equality before the law, such as they are denied the right to locate a witness on behalf of a defendant and they are also denied the right to access CNI records from the police computer system as well as access to criminal records and the RTA database. In relation to this paragraph I can see many Police Officers having apoplexy!
- (j), commercial agents and private investigators are also denied access to information in criminal records CNI records and RTA records database and information from the births deaths and marriages registry for locating missing persons and also people who absconded from their responsibility when they owe money to either an individual or a corporation or an entity.
- (k), in criminal matters the police have access to everything whereas the defendant who retains a private investigator to prepare his/her criminal defence matter has no access to any of the information that the police have. This of course makes a complete mockery of the scales of justice being evenly balanced in that effectively the defendant is denied the right to properly prepare a defence to the charges brought by the police department.

It can be seen from the above that there are massive problems with the existing Act which was drawn up by the previous New South Wales Labour government, it is to be hoped in the interest of fairness that an immediate review of the existing act be undertaken as a matter of urgency so that individuals, companies and corporations are able to properly locate individuals to have them brought before the court so that the court could properly adjudicate in relation to matters of debt collection and for the repossession of goods subject to a court order.

It is essential that any review must be undertaken with the input from the stakeholders in a round table form and not be undertaken by faceless bureaucrats behind closed doors as was the case when the 2004 Act and Regulations were drafted and passed.

It becomes extremely difficult when a debt collector who has a court order to repossess a motor vehicle as an example that he/she cannot do so because at the time of repossession the debt collector cannot properly ascertain that the vehicle is still registered in the name of the person named in the court order, the debt collector is open to charges of stealing by the NSW Police department if the vehicle is not registered in the name of the person on the court order. Any sane person would believe that this is the complete stupidity and cannot be countenanced under any circumstances.

The writer had a number of inputs on behalf of his members during the alleged consultation process by the previous Minister for Police, this was only in written form and there was no proper consultation that one would expect by an organisation that actually represents private investigators and commercial agents across Australia.

If your government is serious about transparency then the solution must be that all investigations conducted on behalf of government departments and statutory authorities must be centred in the premiers department and be conducted by properly licensed independent investigators overseen by the Premiers department. See **Annexure C**.

We only have to listen to Alan Jones on the radio in the morning and as an example a listener has a problem with the housing department and Alan Jones says, *"I'll get onto the Minister"*, in reality what happens is that Jones's minders get onto the Minister's minders who then briefs the Minister who then phones Alan Jones and it goes something like this;- *"thank you Minister for calling, I have a listener who has a complaint about XYZ"* and the Minister says *"thank you I have called for an investigation"*. The only problem with this is that nobody ever finds out the results of any of the alleged internal investigations that have been allegedly been carried out or called for by ministers in various departments. The process only serves Alan Jones's ratings having been able to show he can get a Government Minister to call for an investigation.

As you will be aware the above organisation organises training courses for people coming into the private investigation or commercial agency industry and the writer specifically recalls a listener speaking to Alan Jones in relation to the housing department and the Minister calling for an investigation. Some two days later the writer received a call in relation to a training course for investigations and when asked where the caller worked, the writer was informed that the caller worked in the department of housing and the writer then asked what was her designation prior to becoming an investigating officer and the writer was informed that she was a filing clerk.

Here we have a filing clerk with no qualifications and is designated an investigating officer under the delegation and/or statutory powers of the public authority, to investigate the senior bureaucracy and yet these are the very people who can hire or fire the investigating officer. What a joke this is!

As an example you may recall back in May 2005 I was asked to conduct an investigation by the Liberal party in relation to an independent MP, which was completed, however it is understood that senior members in the Liberal party were not happy with the investigation as it did not result in their desired outcome of the investigation. I merely mention this on the basis that if the same attitude is taken by the Liberal party surely the same attitude must be taken by every government department and statutory authority.

On the other hand, if a minister orders a senior bureaucracy to conduct an investigation of itself and internally the investigator who is employed by the senior bureaucrats must surely have in mind his own basic employment position is at risk as he/she would have to be biased and bear in mind the results that the bureaucracy actually wants.

The voters of New South Wales returned a Liberal government to run this state and the voters expect that the Liberal government under Barry O'Farrell will respond to the wishes of the voters and return democracy and transparency in government

ensuring that small companies can collect the debts owed to them so that their business can stay afloat and serve the public.

Similarly the voters would expect that a person is innocent until proven guilty by law, however it would appear that it is the desire of the Ministry for Police in drafting the Commercial Agents and Private Inquiry Agents Act to deny any citizen of New South Wales the right to be equal before the law in denying their properly licensed and instructed private investigator from having any access to any information in any government department to assist in their defence.

In relation to the commercial agency side of our industry I enclose **Annexure D** which is extracted from Hansard records in the federal parliament and relates to Bad Debts, we have reduced to a typewritten form of the original documents these are available should anyone from your department be interested to view the documentation that we extracted the information from.

In summary we apologise for the figures that we extracted were from the 1997 through to 2002, however the document is still significant in the fact that somewhere in the region of \$5,823,450, 533 was written off as bad debts this figure was for what might be termed partnerships and companies who operate on the basis of an accrual accounting. Interesting to note from a central point of view that company tax was not paid as the companies and partnerships claimed tax losses for the uncollected amounts and from the state's point of view GST was refunded to the partnerships and companies as the original amount was not paid which ended up in a net loss to the states. The figures of course would be more alarmingly to date.

I would like to make an appointment with you to discuss the above and to see if there is any common ground that we can agree on for the betterment of the Industry.

I look forward to hearing from you or one of your senior advisers at your earliest convenience.

Yours faithfully,

John Bracey