

Ministry for Police
Level 13 201 Elizabeth Street
Sydney
NSW 2000

Attention:- Daniel Hoenig, Senior Policy Analyst.

Re:- Submission on Draft Commercial Agents and Private Inquiry Agents Bill 2003

Dear Sir,

We refer to your undated letter (copy enclosed) in relation to the National Competition Policy Review, Final Report October 2003 and the draft Commercial Agents and Private Inquiry Agents Bill 2003.

We have perused the 2 documents above in the short time before Christmas when everybody was winding down and preparing to go on holidays, and we note from our conversation that this would not be going before Parliament before at least April or May next year. We do not feel that there was enough time allotted for a proper submission to be made but we will endeavour to do the best we can in the time frame allotted.

We refer to the Overview of the Bill in relation to the Draft Bill and we are at a loss to see how this has anything to do with Competition as it refers to protecting the public, licensing for Commercial and Private Inquiry Agents, establishing standards and that agents are accountable for their activities.

We fail to see how the public can be protected if there is no training or qualifications for Commercial & Private Inquiry Agents & we will see every Tom, Dick & Harry applying for licenses & will be able to rip off the public like they have never been ripped off before.

This appears to be a Claytons new Draft Bill compared to the existing Act as the only difference appears to be that instead of being licensed by the Local Court as in the past the Police will now issue licenses, i.e. Master Licenses and Operator Licenses replacing Full Agents and Sub Agents.

The real Joke in relation to the draft Bill is that the government is proposing to issue Master and Operator licenses for an as yet undisclosed fee for both companies and individuals to enable them to conduct investigations, carry out surveillance as well as process serving and debt collecting with no training or qualifications whatsoever.

The Joke is further embellished by the fact that Commercial and Private Inquiry Agents are only allowed the same access to information as the normal citizen would have, this poses the question, "What are agents paying for a license for if they have no more rights to information than the ordinary citizen? In other words why should agents have a Master or Operators license when as an ordinary citizen they can do the same thing without a Master or Operators license.

The mind boggles at this mind-blowing revelation and in particular the cost to compile the Draft Bill, as well as the National Competition Policy Review.

It is a fact that the role of the Police is to investigate Criminal matters on behalf of the State, however it seems that they will be overseeing the activities of Commercial and Private Inquiry agents which has nothing to do with Criminal matters.

We would like to detail some previous history and it is as follows:-

Prior to 1990 before the ICAC inquiry into the alleged release of confidential government information, Private Investigators had access to information in the private and public sectors and this acted as a check and balance on the activities and evidence of the Police.

After this inquiry as you are aware the access to information was stopped and it appeared that the Police became out of control as there was no checks and balances and eventually there was a Royal Commission which found that they were corrupt in every facet of the Service in that the police were taking bribes, fabricating evidence and telling lies.

Then there was a small period when corruption seemed to cease and then the Federal Government introduced the amendments to the Privacy Act by way of the Private Sector Amendment Act which under section 6(1), enforcement bodies, which now denies Commercial and Private Inquiry Agents access to information in both the Public and Private sectors as well as the public and Solicitors.

Without these checks and balances on the Police, there will as history has shown, be further corruption by the Police.

The next question to be asked is:-

Who is going to investigate complaints about Commercial and Private Inquiry agents? Most complaints would be of a civil rather than a criminal nature, and the Police have no training, qualifications or expertise to investigate civil matters and nor should they, as the public are already complaining that there are not enough police to investigate criminal matters.

There are other matters that need to be considered such as by denying Private Investigators and Commercial agents access to information on behalf of their clients, for matters and potential matters before the courts and tribunals, could this possibly be considered a denial of natural justice, the right to a fair trial (so that all the evidence can be heard by the court and not just what one side has decided the court should hear), the right to the due process of the law and the right to equality before the law.

We have always believed that competition meant that equality was available to both sides, however the Draft Bill that has currently been drafted seems to deny the people all of the rights in the preceding paragraph and if there is no equality before the law then there can be no proper democracy and we end up with a dictatorship and or a Police state although the two seem to go together.

We were very disappointed that our Institute was not included in the discussions of the National Competition Policy Review, as the above could have been canvassed prior to the Draft Bill being finalised.

Although we have been asked to make a submission in relation to the Draft Bill we do not hold out much hope that we will be heard let alone be asked to participate in further discussions, however we stress that we believe that we should have some constructive input prior to the Bill going to Parliament.

If on the other hand we are not asked to participate, then we can only suggest that you view our draft Bill on our Web site www.aipd.org as we believe that it contains everything that should be included in any proposed Act covering the Commercial and Private Inquiry Industry.

It is plainly clear that the Ministry for Police is not the Ministry for the Commercial and Private Inquiry industry, and once again we would suggest that the responsibility for our industry should be the Attorney-General. This would eliminate any conflict of interest by the Minister for Police and the Commercial and Private Inquiry industry.

Some consideration should be given to Section 25, and in particular 25C, 25E and 25F (copies enclosed) of the Ombudsman Act, in that teachers or the head of the agency must conduct or have an investigation conducted and submit a report to the Ombudsman. Are these people required to hold a Masters license or an Operators license?

It would be unconscionable for a Police Officer to enter a Commercial or Private Inquiry Agents office and be able to peruse his files to see if he is complying with the requirements of the proposed Act especially if the Private Inquiry Agent was acting on behalf of a client preparing a defence brief, or collecting debts on behalf of a Solicitor (privilege).

The original Act was formulated and passed in 1963, but 40 years later we now have almost the identical contents in the Draft Bill as the original Act, so much for progress and it is an indictment on the people who have put the Draft Bill together, no doubt there has been an enormous effort by various Police officers and the spin doctors to come up with and justify the Draft Bill.

An even greater Joke is that you are going to get your unsuspecting Minister to put this Draft Bill before Parliament. God knows what he will think when he starts to understand just what the Draft Bill does not do and the implications as detailed above.

Yours faithfully,

John Bracey
27/12/03
Enclosures.

Footnote:

In August 1992 the ICAC released a report on "the unauthorised release of government information". this strongly and catagorically stated that the Police should never have anything to do with the Private Investigation industry.