

The contemporary role of private investigators in Australia

Michael King looks at the licensing and industry reforms that have shaped the modern private investigator

The private investigation industry in the United Kingdom has been challenged by dubious work practices arising from the activities of a number of private investigators undertaking work for The News of the World. The allegations of private investigators acting as a conduit for improper behaviour are not new; in Australia this assessment was borne out in the 1992 New South Wales Independent Commission Against Corruption (ICAC) inquiry which found that investigators acted as the go-betweens in a 'massive illicit trade' in confidential information (Independent Commission Against Corruption (ICAC), 1992). The last study on private investigator's in Australia was undertaken by Prenzler (2001). In terms of public awareness the image of the private investigator remains a person of dubious character spying on domestic couples. Since the last study the private investigation industry has undergone significant changes in terms of licensing training, regulation and investigative services. These developments have not received much attention in the public media. This lack of media attention is somewhat surprising as developments pose challenges to the justice system.

Fraud investigation

Since the 1990s private investigators have provided fraud and claim investigation to insurance companies and government workers' compensation and motor vehicle injury authorities. These investigations are typically associated with private investigators

conducting surveillance to detect fraud and have been the focus of prior research on private investigators (Prenzler, 2001). In late July 1999 the Commonwealth government commenced a trial of optical video surveillance to investigative welfare fraud. The government decided that Centrelink would contract private investigation firms to undertake optical video surveillance on people suspected of serious welfare fraud, mostly in terms of those engaged in the cash economy or identify fraud. The project in its first year led to almost \$4 million in payments being recovered. Now over 20 private investigator firms conduct video surveillance for the various Commonwealth government agencies.

Prior to the private investigator optical surveillance trials in 1999 only the Australian Federal Police (AFP) and the Australian Customs Service would conduct such large scale surveillance operations. Only AFP had the authority to investigate crimes against the Commonwealth. However, the AFP like all other police agencies across the globe faces the problem of where to focus it's limited resources to attain the best outcome for the community. While Commonwealth agencies still refer cases to the AFP, the cases are assessed on an individual basis depending on a set of risk management indicators. In

recognition of the limited AFP resources the Commonwealth expects individual agencies to investigate crimes against them in the first instance. For many agencies this has resulted in the use of private investigators or external contractors, as expected under the *Commonwealth Fraud Control Guidelines 2003*. Formally the realm of Federal Police the investigations of government employees for alleged misconduct is now new and booming area for private investigators. Initially limited to smaller agencies with limited internal investigation staff private investigators are now contracted to larger agencies to support their own internal fraud teams.

Expansion of services

However, this expansion of investigative services is not limited to Commonwealth agencies. Private investigators now regularly conduct administrative and misconduct investigation for both state and local government agencies. Frequently it is the firms that conducted workers compensation surveillance or Centrelink surveillance that have been most successful in marketing their services to government agencies. Business appears to be very profitable, for example, the Western Australian government introduced a contract to conduct investigation services in relation to allegations of misconduct and employee

investigators acted as the go-betweens in a 'massive illicit trade' in confidential information

grievances. The fees charged under the tender range from AUD\$ 169.00 to AUD\$ 403.00 per hour, while the Department of Human Service

Victoria tender expects to pay private investigators AUD\$ 2.8 million per year to undertake human resource investigations for the agency.

Private investigator licensing requirements have changed significantly over the last decade. Prenzler (2001) found that a lack of national consistency in training, licensing and regulation made regulation problematic. Since 2008 there has been a national approach



to ensure a more rigorous private investigation and private security licensing. No longer are private investigators granted licensing based on prior experience such as policing. Now those wanting to obtain a

private investigator license must undertake the nationally recognised vocational Certificate in Investigative Services comprising of 15

subjects. They are required to submit to criminal and regulatory verifications through the AFP. Applicants must submit to having their fingerprints checked via the AFP national fingerprint register. Private investigators in New South Wales, Victoria, and Queensland are also required to be members of an approved industry association, and adhere to their code of ethics and regulations.

The new private investigator licensing requirements are greater than entry into many of the State Police Services in Australia. For example, the Queensland Police Service, applicants through vocational employment do not need any educational qualifications if they

have completed year 12 schooling and have some two years work experience. While in South Australia, Western Australian and Northern Territory police require no more than a clear criminal and traffic record,

year 12 schooling, a driver's license and in some instances a first-aid certificate. This is contrasted to private investigators applicants who

need to obtain the Certificate in Investigative Services. Further the pre-licensing screening and criminal history searches of private investigators applicants is the same as those entering various state police service.

Recommendations

Licensing reforms to the industry have coincided with the expansion of investigative services into more sensitive areas of the justice system. What is surprising is the call by anti-corruption agencies for a greater investigative role to be played by private investigators. The Crime and Misconduct Commission (CMC) handed down the *Setting the Standard Report* (CMC, 2010)

stating that Queensland police had difficulties in professionally investigating police colleagues. The report made a number of recommendations into the investigation of police disciplinary and misconduct matters one of which stated that police officers should be banned from investigating police. The proposal has been accepted by the government and progressively cases will be led by private investigators or interstate police brought in to the CMC (Sandy, 2011a).

Such proposals would have been unheard of a decade ago and are not without concern. The concerns are mainly centred on the alleged misconduct within the private investigation industry. However, these concerns stem from inquiries held in some instances over a decade ago, such as, for example the Independent Commission Against Corruption (ICAC) in New South Wales two decades ago. In Queensland the last few years have seen a rise in police misconduct ranging from deaths in custody, assaults of prisoners, to drug use while on duty and official corruption. There is public concern about the police services' ability to conduct fair and professional investigations into their own members (Sandy, 2011b). Over the last decade there

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have been few cases of private investigators being prosecuted. Most recently a private investigator was prosecuted for operating without a license in 2007, while in 2008 a private investigator was charged for impersonating a police officer (Arlington, 2008).

An evolution

The contemporary practices of private investigators have changed significantly over the last decade. The mundane reality of private investigator work practices means that few private investigators will undertake investigations akin to what is portrayed in the movies. Instead they have undergone an evolution from insurance investigations to government investigations. This is not to suggest that private investigators no longer play a role in insurance investigations, they do, and many firms still undertake only insurance investigations. Private investigators have used their business model of contracting to government insurers in the area of injury claims to market themselves to government agencies for broader investigations. The method used by the private investigators in conducting insurance or administrative investigations is the same: days spent conducting interviews and asking questions, and gathering relevant evidence. At the same time the industry has faced a number of significant changes to

training, licensing and regulation. All of which are aimed at promoting greater accountability in the industry. The introduction of national consistent licensing, substantial training and more extensive criminal checks including fingerprinting provide prospective clients a greater degree of certainty. The private investigation industry in Australia is now a significant player in all levels of government investigations.

A call for more research is a trite way of ending an article, but in this instance it is appropriate. Little is known about the methods and role private investigators play in the justice systems around the globe. Prenzler (2001) concluded that the private investigator was undervalued in their role within the justice system. The study pointed to the lack of accountability in legislation, licensing and training which held the industry from its true potential. Since Prenzler's study, the issue of training, licensing and regulation have been

significantly addressed. Future research will need to examine the role investigators play in government investigations ensuring consistent approaches to in investigations and

adhering to procedural fairness. It is presently unknown what the future of private investigation will be when they commence investigations into police misconduct in Queensland. The industry has significantly changed since the days where private investigators were limited to domestic surveillance cases pursuing spouses. ■

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