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The Role of Private Investigators and Commercial Agents in Law Enforcement

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The private security industry in Australia is at least double the size of public police services, and while there has been some research on security guards and crowd controllers, very little is known about “inquiry agents” or private investigators.

The authors estimate that there are about 25,000 private investigators in Australia, and this study, based on 40 in-depth interviews in Queensland and New South Wales, is a first attempt to assess what it is they do, how effective they are, the legal and ethical issues facing private agents, and how their efforts can be maximised by their clients, most notably agencies affected by fraud.

While more work needs to be undertaken with a larger random sample to develop an ongoing research base, this paper provides an important description of the activities of those interviewed, and the finding from this sample that for every dollar spent on an investigation, between \$3 and \$6 are saved in uncovering fraud.

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The private security industry comprises (among others) a variety of security guards, crowd controllers, private investigators, process servers (serving legal documents) and debt recovery agents—the latter two often licensed together as “commercial agents”. Consideration of the work of “inquiry agents” (or “private agents”) leads to a number of questions addressed in this research project. What is the size of this sector? What are its main functions? How effective is it? Does it satisfy exclusively private, self-interested ends or does it make a broader contribution to society? To what extent do industry members conform to legal and professional standards of conduct? Is there a need for greater regulation? Should the industry be given more powers to do its work?

Research Method

A three-part research method was developed to find answers to these questions.

1. In order to obtain a picture of the size and occupational categories of the industry, regulatory agencies were contacted to gauge the number of licence-holders.
2. Interviews were conducted with investigators in New South Wales and Queensland. These states have seen considerable scandal and reform in the industry in the last two decades. Interviews were conducted because they allow for in-depth questioning and because private investigators tend to be poor respondents to mail-out

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questionnaires (Gill & Hart 1997). Respondents were pursued through an opportunity method following recommendations from relevant professional associations (the Australian Institute of Private Detectives and the Institute of Mercantile Agents) and from listings in the *Yellow Pages*.

Opinions were sought across a range of specialisations. A total of 40 interviews were conducted—15 in New South Wales and 25 in Queensland. All 40 respondents had Private Investigator licenses (in New South Wales, “Private Inquiry Agent”) and 15 had Commercial Agent licences.

3. The information gathered in steps 1 and 2 above was supplemented with a literature search to identify key documentary source material, including inquiries into the sector.

What is the Size of the Private Agent Sector?

It is extremely difficult to obtain a true picture of the size of the private agent sector because of a lack of consistent licensing figures. Table 1 shows available numbers of licence-holders for Victoria, Queensland, Western Australia, Tasmania and New South Wales. The total figure of 21,333 probably underestimates the size of the sector by at least one-quarter.

A figure of approximately 25,000 is consistent with previous research indicating that the private agent sub-sector makes up between 20 and 30 per cent of the larger security sector (Prenzler 2001). Another way of looking at the figures is in relation to police. The total of 21,333 in Table 1 equals almost half the 44,922 police in Australia in 2001. In New South Wales there are 13,614 police (Australian Institute of Criminology 2001), compared with 15,800 private agents (who comprise only one part of the greater security sector).

Whichever way one looks at these figures, there is a substantial number of private agents operating in Australia. Their work must therefore be seen as a significant specialist component of the complex and evolving network of government and non-government participants in crime containment (Grabosky 1992).

What Do Private Agents Do?

Of the 40 people interviewed for this project, 80 per cent were owners or directors of firms. The typical profile was for a principal to employ a secretary or administrative officer and then subcontract specialist tasks (such as surveillance) to single

operators. Only a few interviewees were in larger firms with more than five employees. The sample presented a very mixed work profile. The larger firms tended to provide diverse services, but with the bulk of work in surveillance or factual investigations. A small number of firms were highly specialised. Only one concentrated on “personal work”—such as searching for missing persons and locating heirs. Another specialised in criminal work, including investigation of extortion and robberies. Other firms tended to concentrate on process serving and debt recovery.

In terms of changes in the nature of private investigator

Table 1: “Private agents” in Australia, 2001

Jurisdiction	Licence category	Number	Total
Victoria			1,945+
	Individual inquiry agents	1,497	
	Company inquiry agents	160	
	Individual commercial agents	49	
	Individual commercial sub-agents	166	
	Company commercial agents	73	
	Process servers (not licensed)	?	
Queensland			1,982+
	Private investigators	1,176	
	Individual commercial agents	273	
	Licensed commercial agent corporations	90	
	Commercial sub-agents	453	
	Private investigator companies	?	
Western Australia			1,465+
	Inquiry agents	429	
	Investigators	1036	
	Debt collectors and process servers	?	
Tasmania			131+
	Inquiry agents	71	
	Commercial agents	7	
	Process servers	53	
	Companies	?	
New South Wales			15,800
	Private inquiry agents	5,339	
	Private inquiry sub-agents	4,434	
	Commercial agents	1,539	
	Commercial sub-agents	4,539	
Grand total			21,333+

Source: Regulatory agencies (figures are for financial year 2000–2001 or calendar year 2001)

work, two key trends were identified. The first was a major shift, over the period from the 1970s to the 1990s, away from “domestic” work towards insurance fraud. “Gone are the days when we chased people for divorces, taking photos”, said one interviewee. The introduction of no-fault divorce was a major factor. Of greater significance was a profound change in the insurance industry’s response to suspect claims. Interviewees claimed that previous practice was to accept most claims and avoid adverse publicity. However, during the 1980s increasing competition and frustration with the level of suspected fraud led to a well-organised system of claims assessment and referral of suspect claims to investigators. The growth in insurance work was also driven by a second major change identified by interviewees: the use of hidden video cameras. The fact that “the camera doesn’t lie” (at least in most cases) makes for crucial objective evidence of fraud, especially for disability insurance.

The following approximate four-way division of labour emerged from the interviews:

- *Anti-fraud work*, mainly for insurance, including factual and surveillance work. For factual matters the process usually begins with interviewing the claimant, establishing a record of interview, and then making further inquiries if necessary. Most surveillance work follows the same routine: the client provides a profile of suspect claims, with documentation such as medical reports, and the investigator then does a standard 20- or 30-hour surveillance and tracking of the person. Insurance work includes investigating stolen vehicles, accidents, arson and welfare fraud.
- *Legal work* involves background or “factual work” for lawyers in civil, and some criminal, cases.

Table 2: Results of the Department of Family and Community Services’ Enhanced Investigation Initiative, 1999–2000

	Outcome
Cases referred to surveillance providers	1,446
Finalised cases	1,063
Finalised cases resulting in debt or reduced payment	747 (70%)
Savings to future outlays	\$4,167,982
Amount identified for recovery action	\$3,996,113

Source: Department of Family and Community Services 2000, p. 238

This largely entails locating and interviewing witnesses or claimants. In some cases agents will locate and analyse forensic evidence, such as documents. Another aspect of legal work is the serving of legal summonses direct to the recipient (process service).

- *Commercial inquiry* is a growing area of work for private investigators. Businesses are turning to private investigators to undertake electronic counter-measures (debugging), liability investigations, workplace investigations into theft or harassment, and pre-employment checks. A growing area is trademark and copyright violation. An associated area of work is that of repossession and debt collection to enforce legal contracts. Although often termed “commercial inquiry”, much of this work can just as easily be done for government as for business.
- The final area is *domestic investigation*. This can include checking partner fidelity in personal relationships, abducted child recoveries and missing person inquiries.

In terms of practical skills, there appears to be a sharp division between investigators who conduct surveillance work and those who conduct factual inquiries. Inquiry work was considered by interviewees to be the most interesting. Respondents emphasised the need for good oral and written communication skills, and a strong sense of what counts as evidence. Surveillance operatives were considered a special breed of hardy and

tenacious types. “Few people can do it well”, observed one veteran. “A good indication is if you can get into your car in summer and sit in the driveway for about four hours.” Traffic lights were the main source of frustration for surveillance operatives because tailing vehicles is a critical element of their work. Extreme patience is an obvious quality required in order to sit for up to 10 hours at a time in a cramped vehicle, urinating in a bottle and observing premises where nothing may happen for days.

Most investigation work was not considered dangerous, especially if agents had good verbal skills. Process serving and debt recovery were seen as the most risky. This work often involves direct confrontation with people in extreme financial trouble. Repossession of vehicles and furniture can at times lead to heated confrontations, and some respondents had been subject to numerous attempted assaults.

How Effective are Private Agents?

Interviewees were extremely positive about the services they provided to clients. They generally estimated that they were able to obtain concrete results in 70 to 90 per cent of cases. This was assessed in terms such as recovery of losses, dropping of suspect insurance claims, criminal convictions, employment termination of offenders or locating people. Many disputed insurance claims are settled by withdrawal of the

claim following the disclosure of video evidence. A number of surveillance operators claimed an approximate minimum saving of \$6 for every \$1 spent on an investigation. Similarly, some investigators estimated that a minimum of \$3 is saved for every \$1 spent on a factual investigation that uncovers fraud.

This investigation work needs to be set in the context of Australia's enormous fraud problem. In its most recent survey, the Insurance Council of Australia (1998) estimated that insurance fraud cost approximately \$800 million in 1995–96. The size of Australia's welfare fraud problem prompted the Commonwealth Government to initiate an anti-fraud scheme in 1999. The scheme involved contracting out surveillance work on suspicious cases that were resistant to formal investigations. Table 2 shows dramatic results from the first year of operation in identifying and stopping multi-million-dollar fraud.

Private agent work can also involve a very personal dimension. Many interviewees took satisfaction from helping clients in difficult circumstances. One gave the example of a client who had been stalked for two years. "Now they can sleep at night", he asserted. The large majority of respondents also had very positive views of the wider contribution they made to society. Some saw themselves as champions of the honest worker by keeping down costs resulting from fraudulent insurance claims or debt evasion:

With every debtor that we can locate and induce to pay their debts we're helping members of the public... You're assisting him recover his debts and prevent him passing on his losses to the public.

There is a lack of appreciation by the public of the professionalism of the industry and the benefits of fraud

prevention and the benefits to the taxpayer of stopping fraud against government.

About half of the interviewees reported referring matters to police for criminal prosecution, and all respondents were strongly in favour of doing more work for the public-sector justice system. Many argued that they could do a range of tasks—such as searching for missing persons, conducting surveillance, executing search warrants, attending burglary scenes or investigating traffic accidents—just as well as and more cheaply than police. The following is an example of cooperation between police and private investigators.

We assisted the police fairly recently in an attempted murder, quite a violent assault, where there were only two detectives working on the matter and the family of the victim said "This is taking too long. How can we help you?" And the police said, well, we [the private investigation firm] are able to do surveillance, door-knocking around the street and so on. And the family came to us and the first thing we said to them was, "We can probably assist you if the police wanted us to. But we're certainly not police officers and we can only do what the police ask us to do." We went to see the police who were only too happy to have someone on board. It ended with an arrest. It ended up very successful.

Although most respondents perceived that a great deal of the demand for their services was a result of government neglect of law enforcement, they also were clear that privacy was a factor that motivated some clients. One respondent cited the example of parents wanting to know if their children were on drugs: "If they are, then they can get them on a program. Police would have to prosecute." Others emphasised the personal service they could provide, and continuity of case management and communication

that is not usually available from even the best police department. The contractual nature of the work gave victims a degree of input, if not control, which was not possible in public-sector processes.

Legal and Ethical Issues

All interviewees were highly conscious of the fact that their occupation entails numerous ethical challenges and risks. Respondents reported receiving and rejecting requests for illegal or ethically questionable services—such as placing listening devices in homes or offices, threatening or harassing people, or seeking victims of domestic violence who had gone into hiding. The 1983 Australian Law Reform Commission's report into privacy found that private agents can be strongly tempted to engage in breaches of privacy. It concluded they:

...might commit trespass... might obtain and disclose information in circumstances amounting to a breach of confidence in the legal sense and might breach legislation aimed at making certain activities criminal, such as that relating to official secrets, interception of telecommunications, and the use of listening devices. (Australian Law Reform Commission 1983, p. 319; for a review of the law as it relates to private agents, see Prenzler 2001)

This assessment was borne out in the 1992 New South Wales Independent Commission Against Corruption inquiry, which found that private inquiry agents acted as the go-betweens in a "massive" trade in confidential information (Independent Commission Against Corruption 1992, p. 3). However, the Commission noted a partial "just cause" element in some cases of illegal access.

In 2000 the Queensland Criminal Justice Commission exposed a similar, although much

less extensive, trade between police and private inquiry agents. The Commission identified the same market conditions for corruption as were identified in New South Wales, and a similar just cause element:

The demand for confidential information is created by end-users such as finance organisations and legal firms, whose staff are often trying to locate evasive individuals. Private investigators and commercial agents act as the intermediaries between the end-users and the suppliers of information. (Criminal Justice Commission 2000, p. xviii)

Recommendations to improve security were focused on police computer systems and management. Nonetheless, the report highlighted the fact that the threat to confidential information goes well beyond police databases. The report recommended a review of licensing of private agents, clarification and toughening of penalties for illegal disclosures, and a prohibition on police working as private investigators. At the same time, it also recommended that consideration be given to allowing licensed agents greater access to information such as criminal histories, and information on drivers' licences and vehicle registrations.

Views of interviewees for the current research project were extremely divergent regarding overall industry compliance with the law and ethical principles. About one-third of respondents said they were unable to comment. Another third felt that there was some misconduct but that this was relatively isolated and extremely difficult to eradicate. "There are still some cowboys" or "a few rogues" were common replies among this group. Another third felt that non-compliance was fairly widespread. The main areas of

alleged non-compliance were accessing confidential information—by far the most extensive—as well as trespass, using unlicensed subcontractors, under-quoting in tenders and not working to tender.

Despite mixed views on current compliance, the very large majority of interviewees agreed that the conduct of private agents and the image of the industry had improved enormously in the last 20 years, especially since the Independent Commission Against Corruption inquiry. Many felt, nonetheless, that public perceptions had not caught up with this change. A few were quite pessimistic about the industry's image. As one stated: "I think public perception is that 80 per cent of us are dodgy, but in reality it's probably less than 0.5 per cent."

Respondents cited a range of legal data sources that were useful for their purposes. These included electronic telephone pages, electoral rolls and property records. Respondents were particularly enamoured of a system operated by Queensland Transport that allows application for particulars relating to vehicle ownership. The restrictions mean that only those acting for insurance companies can access the database (recently amended to applications through solicitors and insurance companies). Documentary support and reasons need to be provided, with penalties for false applications and misuse of information.

The assessment of the value of these legal sources was fairly high, but respondents were unanimous in stating that they were insufficient for all cases. There is a group of people who disappear off these databases and become extremely difficult, if not impossible, to trace; respondents argued the situation necessitated access to a wider range of databases. The type of

information they wanted to access included travel destinations, adoption records, rental property information, criminal histories, financial earnings and assets, and police motor vehicle accident reports. A number of interviewees emphasised the hypocrisy of privacy controls in regard, for example, to criminal histories: "You can sit in a court of law and find out if a person is convicted but then after that the information is kept secret." All respondents, except one, argued that licensing should provide greater rights of access to government-held information and some privately-held information. The arguments were couched in terms of efficiency, but largely in terms of justice. As one interviewee stated:

We're really good at protecting the guilty in our society... You know, a bloke owes \$5,000 to someone—a builder—and he just happens to skip, you know. Why can't we go down to the Road Transport Authority with that lawful excuse, being fully licensed and accredited and all the rest—paid up, good reputation? Why can't I pay to see the RTA [Road Transport Authority] with a letter, even from a lawyer, if they want, to get that information?... All I want to know is where this guy lives because I've got a bankruptcy notice to serve him—or he is the witness in civil matters.

Maximising the Benefits of Private Agency Work

Private agents are available for citizens to pursue justice and protection in circumstances where the state does not provide a service or where an aggrieved party desires a more private service. These interests may be justifiably pursued and contracted to private agents if the agents conduct themselves in accordance with the law. The law as it currently stands in Australia is substantially protective of

people's privacy (Prenzler 2001). The main exception to this is allowable surveillance of people in public—although this is subject to potential prosecution for harassment, nuisance or interference. But in terms of refining the balance of interests, one possible argument is that at present the law is weighted unfairly in favour of people avoiding legitimate legal process. Interviewees presented a strong case for enlarging the access of licensed agents to confidential databases under strictly controlled conditions. There might also be a case for allowing investigators to apply for search warrants, actionable in the company of a solicitor or police officer. The proposals are worth considering in terms both of the interests of justice and to reduce the demand for illicit information.

On the issue of regulation, the results of the interviews supported previous findings that the more restrictive licensing systems introduced in the 1980s and 1990s (with integrity checks and compulsory training) have improved the competency and conduct of security providers, including private agents (Prenzler 2001). It could be argued that this is a self-interested perspective. Nonetheless, interviewees supported closer auditing of companies and a more vigorous system for receiving and investigating complaints. There was a strong consensus regarding the need for improved communication from regulatory agencies, and for more regular consultative research on regulatory strategies.

Training is a major area that practitioners felt required attention. All respondents except one (97.5 per cent) argued that mandated pre-entry training was not adequate in developing both practical and ethical competencies. In Queensland, the minimum training requirement to

obtain a licence is a five-day course. New South Wales has a more advanced system with a sub-agent period of 12 months, including six weeks training for commercial agency work and seven weeks for private investigations (Prenzler 2001). To some extent, however, interviewees' criticisms related more to their own training experiences when starting out. Others were less concerned with the length of training than with the adequacy of specific content areas such as taking statements or dealing with distressed people.

Conclusion

Private investigators, process servers and debt recovery agents occupy a critical place in the justice system. At the same time, there are clearly pressures on these private agents to breach the law in pursuit of goals of law enforcement and crime reduction. All respondents in the interviews conducted for this project attested to a change of consciousness among practitioners over the last 20 years in terms of both a greater respect for privacy principles and also an increased perception of the probability of being exposed and sanctioned for breaching the law. However, interviewees were strongly of the opinion that tougher licensing and enhanced pre-service training were required to underwrite competency and integrity. They were also virtually united in the view that they could provide greater justice to victims of crimes and other wrongs if governments allowed greater controlled access to information.

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