

INVESTMENT SAVINGS & INSURANCE ASSOCIATION OF NZ INC

**Submission**

**to**

**Ministry of Justice**

**on the**

**Private Security Personnel and  
Private Investigators Act 2010**

**Consultation on Code of Conduct  
Regulations**

23 December 2010



**I·S·I**

## **PROPOSED CODE OF CONDUCT FOR PRIVATE INVESTIGATORS**

### **Introduction**

The Investment Savings and Insurance Association (“ISI”) appreciates the opportunity to comment on the Ministry of Justice’s consultation on a proposed code of conduct for private investigators.

ISI members are the companies that issue and manage life insurance, superannuation and managed funds in New Zealand. A list of members is attached at the end of this submission. Our life insurance company members have a particular interest in the regulation of private investigators that are contracted for the investigation of potentially fraudulent insurance claims and our responses to the questions below are focussed on that area of business.

### **General Comments**

ISI members from time to time use private investigators to collect evidence where there is reason to suspect that an insurance claim is fraudulent. This often occurs with income replacement policies, where the policyholder has claimed a benefit on the grounds of incapacity for work, along with Trauma and Total and Permanent Disablement policies where the severity of the disability is at issue. ISI members also occasionally use private investigators to help confirm whether or not Terminal Illness and Death claims are valid.

In such cases, the insurance company may have reason to suspect fraud or a breach of the terms and conditions of the policy by the policyholder but it is unlikely that the Police would agree to investigate unless or until the insurance company is able to supply evidence. The insurance company may therefore contract with a private investigator to obtain information that may be used in legal action against the policyholder or to determine the claim.

The previous law prohibited licensed private investigators from photographing or audio-recording a person without that person’s written permission, which obviously prevented a private investigator from photographing an insurance claimant doing things that would indicate that the insurance claim was fraudulent.

If, however, the collection of evidence to support legal proceedings for insurance fraud was carried out by the Police, rather than being commissioned by the insurance company, it was not subject to the requirement to obtain the target’s written permission.

We believe there is a benefit to the insurance public in insurance companies being able to use private investigators to collect such evidence. All policyholders share the cost of fraudulent claims and if they are unable to be pursued rigorously insurance premiums will be higher than would otherwise be necessary.

### **Key Recommendation**

Our key recommendation is that private investigators hired by insurance companies for investigating suspected fraudulent insurance claims should not be prohibited from taking or

using photographs or making other recordings of the subjects of investigation without their consent, where the evidence is to be used to support the findings of the investigation.

## PART 2 – QUESTIONS

### PURPOSE

**Q1. Do you think that the purpose of the investigation should affect restrictions on where and how private investigators may carry out surveillance of individuals?**

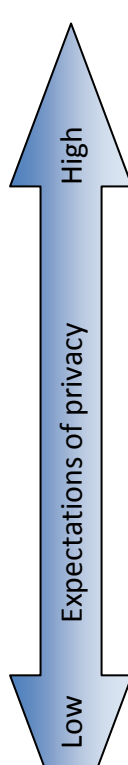
Yes. We consider that the purpose of the surveillance is a key factor in deciding the level of restrictions on private investigators.

In the case of insurance investigations, the information is sought with a view to determining whether the claimant has made truthful statements in the insurance claim and potentially to use the information as evidence if the decision is made to cancel the claim and policy and perhaps take a case through the courts.

We believe that there is a public benefit in private investigators being able to provide insurance companies with photographic evidence where the investigation reveals that a fraudulent claim has been made. Provision of photographic evidence allows cases before courts or tribunals to be resolved more readily than where only the oral testimony of the private investigator can be submitted.

### LOCATION

**Q2. In which of the following locations do you think there could be an unreasonable intrusion into a person’s privacy if a private investigator was observing or monitoring them there?**



Place	Please tick if you agree	
	Y	N
Inside the person’s home?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Inside <i>any</i> private home (not necessarily the person’s own home eg, a friend’s home)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
In an area immediately outside a private home such as a yard, garden or deck? These areas may be visible to passers-by, but there could still be an expectation that a person’s activities in those areas are private.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
In a place where a person could reasonably expect that they will not be observed by the public at large? This would include, for example, a hotel room, hospital ward, members-only gym, or workplace.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

In an area to which the public generally has access eg, cafe, bar, swimming pool?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
In an area to which the public frequently has unrestricted access such as a bus-stop, railway station, airport or public park?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Q3. Are there any other places not covered above in which you think there could be an unreasonable intrusion into a person's privacy if a private investigator was observing or monitoring them there?**

If so, please specify those places and explain why you think this.

In respect of the places listed above, we believe that surveillance inside the bedrooms of a house would be an unnecessary intrusion, except if said bedroom is being used as a home office.

**MANNER**

**Q4. For the places you have identified in Q2 and Q3 above in which there could be an intrusion into a person's privacy, what type of restrictions should apply?**

Place	Please tick the type of surveillance you think should be prohibited or restricted		
	Unaided surveillance	Visual equipment	Audio Equipment
Inside the person's home?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you wish to give details, please do so here. If you can think of an example to illustrate your point further, please give one:  
*(eg, if you have ticked the "visual equipment" box: "ok to watch a person through a window with binoculars, but not to record their behaviour on camera")*

No restrictions should apply where the person's home is used as a home office.

Is your response the same regardless of the *purpose* of the investigation?

Purpose is the most important factor in deciding whether surveillance is appropriate. An insurance company will only employ a private investigator to observe the actions of a claimant when there is reasonable cause to suspect that the claimant has given false information about, for example, the level of disability. Where that reasonable cause exists a private investigator should be able to conduct surveillance where ever necessary.

Inside <i>any</i> private home (not necessarily the person's own home eg, a friend's home)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
--	--------------------------	-------------------------------------	-------------------------------------

If you wish to give details, please do so here. If you can think of an example to illustrate your point further,

please give one:

[Click here to enter text.](#)

Is your response the same regardless of the *purpose* of the investigation?

See comments above. Purpose is the key factor in determining whether the investigation is appropriate. There should, however, not be any prohibition against taking photographs of activities within a private home (e.g. walking unaided, doing housework) where they are easily visible from public space such as the footpath..

In an area immediately outside a private home such as a yard, garden or deck? These areas may be visible to passers-by, but there may still be an expectation that a person's activities in those areas are private.

If you wish to give details, please do so here. If you can think of an example to illustrate your point further, please give one:

[Click here to enter text.](#)

Is your response the same regardless of the *purpose* of the investigation?

See comments above.

In a place where a person could reasonably expect that they will not be observed by the public at large? This would include, for example, a hotel room, hospital ward, members-only gym, or workplace.

If you wish to give details, please do so here. If you can think of an example to illustrate your point further, please give one:

Is your response the same regardless of the *purpose* of the investigation?

See comments above.

In an area to which the public generally has access, eg, cafe, bar, swimming pool?

If you wish to give details, please do so here. If you can think of an example to illustrate your point further, please give one:

[Click here to enter text.](#)

Is your response the same regardless of the *purpose* of the investigation?

The comments made above also apply here.

In an area to which the public frequently has unrestricted access such as a bus-stop, railway station, airport or public park? Although there is generally a low expectation of privacy in these areas, there may be types of surveillance by private investigators that should be prohibited or restricted in some way.

If you wish to give details, please do so here. If you can think of an example to illustrate your point further, please give one:

[Click here to enter text.](#)

Is your response the same regardless of the *purpose* of the investigation?

See comments above.

Any additional places you have noted in your response to Q3?

[Click here to enter text.](#)

[Click here to enter text.](#)

[Click here to enter text.](#)

If you wish to give details, please do so here. If you can think of an example to illustrate your point further, please give one:

[Click here to enter text.](#)

Is your response the same regardless of the *purpose* of the investigation?

[Click here to enter text.](#)

**MANNER**

**Q5. Do you think a private investigator should be prohibited from using any of the following surveillance techniques?**

Activity	Tick if you agree	
	Y	N
Entering, taking or interfering with a person's property for the purposes of monitoring their behaviour or activities. This would include, for example, going through bank statements in their discarded household rubbish.	√ <input type="checkbox"/>	<input type="checkbox"/>
<p>If you wish to give details, please do so here:</p> <p>This question is unclear as the examples do not match the question. We agree that an investigator should be prohibited from interfering with personal property (including discarded household rubbish) but we do not agree that there should be a prohibition from watching a person's house from the outside when they are not (or are) there. The activities of other members of the household also often provide information that supports the fraudulent actions of the claimant.</p> <p>Is your response the same regardless of the <i>purpose</i> of the investigation?</p> <p>Yes. Even where there is reasonable cause for an investigation we do not support interference with personal property.</p>		

Installing a surveillance device on the property of the person who is being observed or monitored? This could include, for example, installing a hidden camera in a person's garden.	√ <input type="checkbox"/>	<input type="checkbox"/>
--	----------------------------	--------------------------

<p>If you wish to give details, please do so here:</p> <p>We believe there is a distinction between what is permissible on public and private property. We would not support installation of a surveillance device on the property of the person under investigation although it should be permitted to monitor the person by means of a device installed on public property.</p> <p>Is your response the same regardless of the <i>purpose</i> of the investigation?</p> <p>Yes. Even where there is reasonable cause for an investigation we do not support interference with personal property.</p>		
--	--	--

<p>Entering or installing a surveillance device on <i>any</i> private property without the consent of the owner or lawful occupier? This could include, for example, a workplace or a neighbouring property.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
--	-------------------------------------	--------------------------

If you wish to give details, please do so here:

Same comments apply as for previous question

Is your response the same regardless of the *purpose* of the investigation? Yes.

<p>Monitoring a person's activities by means of a tracking device?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--	--------------------------	-------------------------------------

If you wish to give details, please do so here:

We believe it should be permissible to use a device to track the movements of a person under investigation. It is often difficult to track a person successfully in the bigger cities and subjects are often lost in heavy traffic congestion. Tracking devices assist with this and also assist with the management of surveillance costs (another factor in the cost of fraud to an insurance company, which can affect policy premiums), because less private investigation agents are required per job.

Is your response the same regardless of the *purpose* of the investigation?

No. All of our comments are made in the context of an insurance claim investigation where the insurance company can demonstrate reasonable cause for the investigation.

<p>Attempting to influence a person's behaviour for the purposes of surveillance eg by misleading a person as to who they are and why they are making enquiries? This may be more intrusive than simply observing or monitoring a person because it can also affect what a person does or says.</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
---	--------------------------	-------------------------------------

If you wish to give details, please do so here:

For a speedier investigation it may be necessary to pose as a potential customer/client and have the client carry out his/her normal work. For example, a kitchen fitter may claim to be totally disabled, yet still drive a sign-written van for the business. With the global economic crisis some businesses are slow and, given the opportunity of work, the claimant performs these tasks willingly.

Is your response the same regardless of the *purpose* of the investigation?

The purpose of an insurance claims investigation is to ascertain the person's normal behaviour rather than to change it. If a person is truly disabled to the point of claiming a total disablement benefit a work opportunity will not change the level of physical or emotional disablement. If the investigation reveals a capacity for work it is potential evidence of fraudulent behaviour.

<p>Surveillance which, if the person became aware of it, is likely to lead a person to change their behaviour or activities to avoid it? This could include, for example, intimidating behaviour such as staking out a person's property for a prolonged period.</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>If you wish to give details, please do so here:</p> <p><a href="#">Click here to enter text.</a></p> <p>Is your response the same regardless of the <i>purpose</i> of the investigation?</p> <p>We agree that surveillance should be possible but we would not support intimidating behaviour. An insurance investigation would require the normal behaviour and activities of the claimant to be observed. However, if the claimant has made a false statement and is capable of more physical activity than stated the behaviour or activities may change if the subject became aware of the surveillance. We would not consider surveillance in that situation to be intimidating. Additionally, that surveillance may be over a prolonged period of time as insurance companies are not interested in demonstrating that a person can do something for one day only as it can often be argued by the claimant that he/she was merely having a good day and that could be supported by the medical profession.</p>		

## GENERAL QUESTIONS

**Q6. Is there any surveillance equipment that private investigators should be prohibited from using in any circumstances? For example, cameras with the ability to observe people from very long distances or recording devices that can record conversations from very large distances?**

We consider it should be acceptable for an investigator to collect photographic evidence where a person's activities can be observed from a public site (albeit with a long lens or recording device).

**Q7. Are there any other situations or circumstances you can think of in which private investigators' surveillance activities should be prohibited or restricted?**

We do not support investigators entering private homes or 'rummaging' through personal rubbish to find documents or any other form of evidence.

**Q8. Are there any other comments or suggestions you would like to make about the proposed code of conduct for private investigators?**

## **List of ISI Members**

### **ISI MEMBERS**

AIA NZ  
AMP Financial Services  
Asteron Life Ltd  
AXA New Zealand  
BNZ Investments and Insurance  
CIGNA Life Insurance NZ Ltd  
Dorchester Life  
Equitable Group  
Fidelity Life Assurance Co Ltd  
FANZ  
FNZ  
Gen Re LifeHealth  
Hannover Life Re of Australasia Ltd  
ING New Zealand Ltd  
Kiwibank Ltd  
Medical Assurance Society NZ Ltd  
Mercer  
Munich Reinsurance Co of Australasia Ltd  
Pinnacle Life  
Public Trust  
RGA Reinsurance Co. of Australia Ltd  
Sovereign Ltd  
Swiss Re Life & Health Australia Ltd  
TOWER New Zealand  
Westpac/ BT Funds Management Ltd

### **Associate Members**

Bell Gully  
BNP Paribas  
Bravura Solutions  
Burrowes & Co  
Chapman Tripp  
Davies Financial & Actuarial Ltd  
Deloitte  
DLA Phillips Fox  
Ernst & Young  
InvestmentLink (New Zealand) Ltd  
KPMG  
Kensington Swan  
Melville Jessup Weaver  
Minter Ellison Rudd Watts  
Morningstar Research Ltd  
PricewaterhouseCoopers  
Russell McVeagh  
Simpson Grierson