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Review of Private Investigators and Security Guards Act 1974

The Investment Savings and Insurance Association (“ISI”) appreciates the opportunity to comment on the Ministry of Justice’s discussion document *Review of Private Investigators and Security Guards Act 1974*.

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 this submission focuses on that area of the review.

We note that the privacy law aspects of covert photography and audio-recording will be addressed in a Law Commission discussion document to be released later this year.

Insurance Claims

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 is most likely to occur with income replacement policies, where the policyholder has claimed a benefit on the grounds of incapacity for work.

In such cases, the insurance company may have reason to suspect fraud 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.

The current law (carried forward into the Bill) prohibits licensed private investigators from photographing or audio-recording a person without that person’s written

permission, which obviously prevents a private investigator from photographing an insurance claimant doing things that would indicate that the insurance claim was fraudulent.

If 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 would not be subject to the requirement to obtain the target's written permission.

There is a benefit to the insurance public in insurance companies being able to use private investigators to collect such evidence and we recommend that the law should explicitly allow it. All policyholders share the cost of fraudulent claims and if they are unable to be pursued rigorously premiums will be higher than would otherwise be necessary.

Options for Reform

The review document balances the public interest in information gathering for the investigation of unlawful activities against the legitimate expectation of privacy in the home, on private property or in a public place.

Our view is that the public interest is best served by licensed private investigators being able to take photographs or make audio-recordings of a person without consent when they are collecting evidence for an insurance company investigation of insurance fraud. That ability should apply on public property, private property to which the public has access and private property that the person does not occupy.

Misleading Conduct

As noted in paragraph 5.8 of the discussion document, a blanket ban on misleading conduct would rule out virtually any undercover work by private investigators. The effectiveness of insurance claims investigations would be significantly reduced if investigators had to warn targets of their activities in all circumstances, not just taking photographs or making audio-recordings.

For example, a private investigator may 'mystery shop' to see what business or occupation a person is undertaking while claiming on an income protection policy. Technically, that would be misleading as the private investigator has no intention of purchasing the services. However, quite clearly the behaviour of the target would change if he/she was advised of the private investigator's purpose. It needs to be recognised that those being investigated for insurance fraud are suspected of engaging in misleading activity themselves and warning them is clearly going to enable them to conceal their misleading activity.

Use of Information for Illegal Purposes

Collection of evidence for the prosecution of fraudulent claims on insurance policies is a specialised area and there should be no concern that insurance companies would use the information for any other purpose. Insurance companies and their staff have very high standards of compliance with the Privacy Act requirements for the collection, storage and use of personal information.

Insurance companies should be able to rely on the standards of private investigators who have gone through the registration process and we would support specific

standards and obligations being made by the Licensing Authority to ensure the highest standards are maintained.

Recommendations

We recommend that a licensed private investigator collecting evidence for an insurance company investigation into fraud or dishonesty in an insurance claim should be exempted from the provisions of section 52 of the Private Investigators and Security Guards Act 1974 and clause 66 of the Private Security Personnel and Private Investigators Bill.

We also recommend that such private investigators undertaking specialised insurance fraud investigations should not be subject to a requirement to fully disclose material facts about themselves or their purpose.

Conclusion

In conclusion, ISI considers that there is a definite public interest in insurance fraud being rigorously prosecuted. For insurance companies to investigate suspected fraudulent claims, it is essential that licensed private investigators should be able to collect evidence without having to notify the claimant that they are doing so.

We would be happy to discuss these points with you if that would be helpful.

Yours faithfully,

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EXECUTIVE OFFICER

List of ISI Members

ISI MEMBERS

AIG Life
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
Gen Re LifeHealth
Hannover Life Re of Australasia Ltd
ING New Zealand Ltd
Kiwibank Ltd
Medical Assurance Society NZ Ltd
Munich Reinsurance Co of Australasia Ltd
Public Trust
RGA Reinsurance Co. of Australia Ltd
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