

**INVESTMENT SAVINGS & INSURANCE ASSOCIATION OF NZ  
INC**

**SUBMISSION**

**TO THE  
JUSTICE AND ELECTORAL SELECT  
COMMITTEE**

**ON THE**

**PRIVATE SECURITY PERSONNEL AND  
PRIVATE INVESTIGATORS BILL**

**12 June 2009**



**I.S.I**

## 1.0 Introduction

- 1.1 The Investment Savings and Insurance Association ("ISI") is the industry association representing the companies which issue or manage life insurance, superannuation and managed funds.
- 1.2 There are 15 ISI members that offer life insurance products. ISI members are also the leading providers of KiwiSaver funds and all six default providers are members of ISI.
- 1.3 A list of ISI members is given at the end of this submission.
- 1.4 ISI appreciates the opportunity to provide comments to the Justice Committee on the Private Security Personnel and Private Investigators Bill ("the Bill"). 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 aspect of the Bill.

## 2.0 Recommendation

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 clause 66 of the Bill.

## 3.0 Comments – Insurance Claims

- 3.1 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.
- 3.2 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.
- 3.3 The current law and clause 66 of this Bill prohibit 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.
- 3.4 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.

- 3.5 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.
- 3.6 Insurance companies do not engage private investigators until there is a significant degree of suspicion that an insurance claim is fraudulent (cost is clearly an inhibitor) and most companies would have a check-list of factors which would give rise to suspicion and further investigation.
- 3.7 In cases that do progress to court, the facility for private investigators to supply photographic, video or audio recordings would assist the court by reducing the number of instances where evidence is one person's word against another.
- 3.8 We acknowledge that the public interest in information gathering for the investigation of unlawful activities must be balanced against the legitimate expectation of privacy in the home, on private property or in a public place.
- 3.9 However, 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.
- 3.10 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.
- 3.11 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 codes of conduct being made by regulation under clause 106 to enable the Licensing Authority to ensure the highest standards are maintained.

## **4.0 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.

## 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  
Mercer  
Munich Reinsurance Co of Australasia Ltd  
Public Trust  
RGA Reinsurance Co. of Australia Ltd  
Sovereign Ltd  
Southsure Assurance  
Swiss Re Life & Health Australia Ltd  
TOWER New Zealand  
Westpac/ BT Funds Management Ltd

### Associate Members

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