

# **Private Investigators Bill 2005**

**A Draft Bill Setting Out The Regulatory Requirements For The Private Investigation Profession in Australia**

**This draft Bill has been researched and prepared by the**

**Australian Institute of Private Detectives Limited**

**This document is not held out to be in any way an official document of the Commonwealth of Australia**

## **TABLE OF PROVISIONS**

### **PART 1 - PRELIMINARY**

1. Short Title
2. Commencement
3. Repeal of States and Territories Acts
4. Definitions
5. Exclusions

### **PART 2 - PRIVATE INVESTIGATOR CONTROL BOARD**

5. Constitution of Control Board
7. Membership of Control Board
8. General function
9. Prosecutions

### **PART 3 - PRACTICING CERTIFICATES**

10. Issue of Practicing Certificates

11. Application for Practicing Certificate
12. Effect of Practicing Certificate
13. Requirement of a course of education
14. Refusal of application for Practicing Certificate
15. Duration of Practicing Certificate
16. Refusal, suspension or cancellation of Practicing Certificate
17. Register of Certified Private Investigators
18. Transitional
19. Bona Fide of applicant
20. Commissioner of Police to provide assistance

#### **PART 4 - UNQUALIFIED PRIVATE INVESTIGATORS**

21. Person acting as a Certified Private Investigator
22. Unlawful representations
23. Limitation on other work

#### **PART 5 - INVESTIGATIONS**

24. Access to Information
25. Applications for Search Warrants
26. Investigation of Complaints
27. Persons required to be Certified Private Investigators
28. Sharing of receipts or proceeds

#### **PART 6 - MISCONDUCT AND COMPLAINTS**

29. Person complained against deemed to be a Certified Private Investigator
30. Complaints against a Private Investigator Corporation
31. Complaints
32. Complaints made by the Control Board

- 33. Investigation of complaints
- 34. Summary dismissal of complaints
- 35. Decision of Control Board
- 36. Length of suspension of Practicing Certificate
- 37. Professional misconduct

## **PART 7 - INSURANCE AND INDEMNITY**

- 38. Private Investigator Mutual Indemnity Fund
- 39. Separate bank account
- 40. Investment of Indemnity Fund
- 41. Payments from the Indemnity Fund
- 42. Contributions
- 43. Levies
- 44. Failure to pay
- 45. Audit of Indemnity Fund

## **PART 8 - PRIVATE INVESTIGATOR CORPORATIONS**

- 46. Corporations carrying on business as a Private Investigator Corporation
- 47. Certification of Corporations
- 48 . Application for Certification
- 49. Effect of Certification
- 50. Refusal of Certification
- 51. Duration of Certification
- 52. Suspension or cancellation of Certification
- 53. Register of Private Investigator Corporations
- 54. Bona Fide corporations
- 55. Commissioner of Police to provide assistance

- 56. Institute and Control Board not to divulge information
- 57. Offence by corporation or officers
- 58. Clients and investigations of a Private Investigator Corporation
- 59. Corporations to make payments

## **PART 9 - FEES**

- 60. Certified Private Investigators and Private Investigator Corporation fees
- 61. Determinations in respect of fees
- 62. Disputed fees

## **PART 10 - TRUST ACCOUNTS**

- 63. Money received
- 64. Keeping of accounts
- 65. Relief for bankers
- 66. Power of Court to appoint receiver in certain cases

## **PART 11 - APPEALS**

- 67. Constitution of Appeal Board
- 68. Membership of the Appeal Board
- 69. Appeal against refusal, suspension or cancellation of Practicing Certificate or Certification
- 70. Control Board to provide statement
- 71. Decision of Appeal Board

## **PART 12 – OVERSIGHT**

- 72. Ombudsman

## **PART 13 - MISCELLANEOUS**

- 73. General penalty provision
- 74. Penalties for corporations
- 75. Ceasing to act under this Bill

76. Civil Remedy not affected by proceedings for an offence

## **SCHEDULE 1 - CONTROL BOARD POWERS**

## **SCHEDULE 2 - APPEAL BOARD**

## **SCHEDULE 3 - PENALTIES**

### **PART 1 - PRELIMINARY**

#### **1. Short Title**

This Bill is the Private Investigators Bill 2005.

#### **2. Commencement**

This Bill commences on a day or days to be appointed by proclamation.

#### **3 Repeal**

The State and Territories Acts to be repealed

#### **4. Definitions**

In this Bill:-

**"AIPD"** means the Australian Institute of Private Detectives Ltd

**"Appeal Board"** means the Private Investigator Control Appeal Board.

**"Appellant"** means a person who, or corporation which, appeals to the Appeal Board under Part 10.

**"Applicant"** means a person who applies for a Practising Certificate or a corporation which applies for a certification from the Control Board under Part 3 or Part 8 respectively.

**"Authorised Justice"** means a Magistrate or a Justice of the Peace

**"Certified Private Investigator"** means a person holding a current Practising Certificate issued under Part 3 who is engaged in the practice of:

(a) obtaining and furnishing information as to the personal character or action of any person or as to the character or nature of the business or occupation of any person or corporation;

(b) determining, verifying, or clarifying a certain set of facts;

(c) Acting on the instructions of a Barrister or a Solicitor in the preparation of a defence in Criminal and Civil matters or potential matters before the courts and Tribunals

a. assisting a client in a proceeding, or

b. who exercises or carries on any of the following functions for a client;

(i) serving any writ, summons, or other legal process;

(ii) ascertaining the whereabouts of, or repossessing, any goods the subject of a lease, hire-purchase agreement, or bill of sale, or taking possession of any goods the subject of a mortgage within the meaning of the Credit Act 1984 or;

(iii) collecting, or requesting, or demanding payment of debts

(iv) preparing documents for lodgement at Local, District and Supreme courts

**"Client"** means any natural person, corporation, registered business, government department or authority located in Australia or in any other country which engages or employs a Certified Private Investigator or a Private Investigator Corporation.

**"Code of Practice"**, means the Code of Practice for Private Investigators in Australia regulated by the Australian Institute of Private Detectives Ltd.

**"Commissioners of Police"** means the Commissioners of Police appointed under various State or Territory legislations

**"Control Board"** means the Private Investigator Control Board.

**"Corporation"** means any corporation which is not a Private Investigator Corporation.

**"Department Head"** has the same meaning as in the Public Sector Management Act 1988.

**"Documents"** includes:

(a) any paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;

(b) a disc, tape or other article from which sounds, images or messages are capable of being reproduced; and

(c) a disc, tape or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device.

**"Fee"** includes any form of and any expectation of, remuneration, any item received in lieu of remuneration, any gain or any reward.

**"Indemnity Fund"** means the Private Investigator Mutual Indemnity Fund.

**"Information"** includes opinions.

**"Institute"** means the Australian Institute of Private Detectives Limited.

**"Investigation"** includes the performance of surveillance.

**"Investigator"** means a Certified Private Investigator.

**" Certification"** means a certification issued to a corporation under Part 8 and which entitles that corporation to carry on the business of a Private Investigator Corporation.

**"Person"** means a natural person only and does not include a corporation or a Private Investigator Corporation.

**"Police Services"** means the Police Services of various States, Territories and the Federal Police.

**"Practicing Certificate"** means a certificate issued under Part 3 to a person and which carries endorsements to indicate the areas of practice in which the person is certified to practice.

**"Private Investigator Corporation"** means a corporation which is the holder of a Certification issued under Part 8 and which is engaged in the practice of:

(a) obtaining and furnishing information as to the personal character or action of any person or as to the character or nature of the business or occupation of any person or corporation;

(b) determining, verifying, or clarifying a certain set of facts;

a. assisting a client in a proceeding, or

b. who exercises or carries on any of the following functions for a client;

a. assisting a client in a proceeding, or

b. who exercises or carries on any of the following functions for a client;

- (i) serving any writ, summons, or other legal process;
- (ii) ascertaining the whereabouts of, or repossessing, any goods the subject of a lease, hire-purchase agreement, or bill of sale, or taking possession of any goods the subject of a mortgage within the meaning of the Credit Act 1984 or;
- (iii) collecting, or requesting, or demanding payment of debts
- (iv) preparing documents for lodgement at Local, District and Supreme courts

**"proceeding"** means:

- (a) any proceeding in a court, an intended proceeding, or
- (b) any proceeding or hearing before, or an examination by or before, a tribunal;

whether the proceeding, intended proceeding, hearing or examination is of a civil, administrative, criminal, disciplinary or any other nature.

**"Professional Integrity Branch"**, includes the Internal Affairs Branch or the equivalent in each State, Territory and Federal police services.

## **5. Exclusions**

1. Subject to sub-section (2) this Bill shall apply to any person practicing as or conducting the business of a Certified Private Investigator or a Private Investigator Corporation.

(2) This Bill shall not apply to:

(a) Loss Adjustors qualified by the Australian Institute of Loss Adjusters Limited or the Chartered Institute of Loss Adjusters (Australasian Division) providing that they do not engage in investigations of an incident and matters relating to liability issues;

(b) Members of the Police Services in all States and Territories and the Federal Police;

(c) Specialised and qualified expert witnesses;

a. Liquidators, receivers and official managers as approved by the Supreme Courts of all States and Territories and the Federal Court;

b. Legal practitioners holding a current Practising Certificate issued by the relevant society in all States and Territories;

(g) Investigators of the New South Wales Independent Commission Against Corruption; Investigators of the New South Wales Police Integrity Commission (PIC).

- (h) Investigators of a Royal Commission duly appointed under the laws all States and Territories and the Federal government;
- (i) Any specially appointed Judicial Inquiry in any State and Territory;
- (j) National Crime Authority

## **PART 2 - PRIVATE INVESTIGATOR CONTROL BOARD**

### **6. Constitution of Control Board**

- (1) There is constituted by this Bill a Board with the name "Private Investigator Control Board".
- (2) The Control Board:
  - (a) has and may exercise the functions conferred or imposed on it by or under this Bill or any other Act; and
  - (b) subject to this Bill, does not, for any purpose, represent the Crown.

### **7. Membership of Control Board**

- (1) The Control Board shall consist of 12 members.
- (2) Of the members:
  - (a) 6 are to be nominated by the Institute;
  - (b) 1 is to be a community member to be nominated by the Prime Minister;
  - (c) 1 is to be nominated by the Council of the Australian Law Society;
  - (d) 1 is to be nominated by the Insurance Council of Australia;
  - (e) 2 are to be nominated by the Federal Attorney General.
  - (f) 1 is to be nominated by the Commissioner of the Federal Police.
- (3) Schedule 2 has effect with respect to the Control Board.

### **8. General function**

- (1) Subject to this Bill, the Control Board may carry out any activity or make any determination or decision for the benefit of the members of the Institute.
- (2) Where under this Bill a thing may be ordered by the Control Board, the Control Board may order such a thing by making a determination ordering it.
- (3) Where under this Bill the Control Board may make a direction with respect to a matter, the direction may be made after the Control Board has made a determination to make the direction.
- (4) The Control Board through the Australian Institute of Private Detectives will administer the Private Investigators Bill 2005 and will report to the Attorney-General every year and such report to be tabled in Parliament on the various activities as specified in the regulations.

## **9. Prosecutions**

- (1) The Control Board shall be entitled to-
  - (a) Institute and conduct prosecutions for offences committed against this Bill;
  - (b) conduct any appeal in respect of any such prosecution.
- (2) The Control Board shall, with respect to a prosecution for an offence committed against this Bill, have the same functions, responsibilities and powers of the Director of Public Prosecutions as provided under Part 3 of the Director of Public Prosecutions Act 1986.
- (3) A person or a corporation convicted of an offence against this Bill shall be liable to pay any costs incurred by the Control Board with respect to-
  - (a) the prosecution of that person or of that corporation; and
  - (b) any appeal which relates to the prosecution of that person or that corporation.
- (4) The Control Board shall pay any money by way of costs received by it under sub-section (3) of this section into the Indemnity Fund.
- (5) Any costs liable to be paid under sub-section (3) of this section shall not be taxed.
6. Any dispute regarding costs shall be determined by a Costs Committee comprising two representatives from any Law Society and Bar Association in any state where the alleged dispute took place.
7. Any decision determined by the Costs Committee is final and no appeal can be made to any Court or Tribunal for review, either on matters of fact or of law.
8. A chairman of the Costs Committee shall be elected by the members of the Costs Committee.

9. In the event of a tied decision of the Costs Committee to make a determination, the chairman for the time being shall have the casting vote.

## **PART 3 - PRACTICING CERTIFICATES**

### **10. Issue of Practicing Certificates**

Subject to this Bill, the Institute may issue a Practicing Certificate to any person.

### **11. Application for Practicing Certificate**

(1) A Certified Private Investigator may, before a Practicing Certificate held by that person expires, apply to the Institute for a new Practicing Certificate.

(2) A person who is not a Certified Private Investigator may at any time apply to the Institute for a Practicing Certificate.

(3) Any person specified in sub-sections (1) or (2) of this section must be a financial member of the Institute.

### **12. Effect of Practicing Certificate**

(1) A Practicing Certificate issued to a person:

(a) shall entitle that person to practice as a Certified Private Investigator;

(b) may be endorsed so as to limit the practicing rights of that Certified Private Investigator in any manner determined by the Institute through the Control Board; and

(c) may require that Certified Private Investigator to undertake and complete courses of education as determined by the Institute.

(2) Without limiting the generality of sub-section (1)(b), the Institute through the Control Board may limit the practicing rights of a Certified Private Investigator to one or more of the following areas of practice-

(a) Surveillance;

(b) Factual Investigation;

(c) Family Law;

(d) Arson;

- (e) Defamation;
  - (f) Intellectual Property;
  - (g) Criminal;
  - (h) Debt Collection;
  - (i) legal searching; or
  - (j) any other area of investigation as the Control Board determines.
- (3) Any Certified Private Investigator the subject of sub-section (2) of this section has the right of appeal in accordance with Part 12 of this Bill.

### **13. Requirement of a course of education**

- (1) The Control Board may require an applicant to complete one or more courses of education before issuing that applicant with a Practicing Certificate.
- (2) For the purposes of sub-section (1) of this section and this Bill generally, the Institute shall establish and administer all courses of education, or license an organisation on behalf of the Institute.
- (3) Any person, business, or corporation, who or which conducts any training courses pursuant to this Bill, without the authority of the Institute through the Control Board, commits an offence against this Bill.

### **14. Refusal of application for Practicing Certificate**

- (1) The Institute through the Control Board may refuse to issue a Practicing Certificate if an application is not accompanied by:
- (a) a fee of such amount as is determined by the Institute through the Control Board; or
  - (b) does not contain such information as may be required by the Institute.
- (2) The Institute through the Control Board may refuse to issue a Practicing Certificate to an applicant-
- (a) who has not undertaken and completed a course of education as required by the Institute through the Control Board or;
  - (b) who is a holder of a suspended Practicing Certificate.
- (3) The Institute through the Control Board may refuse to issue a Practicing Certificate if a finding of professional misconduct has been made pursuant to Part 6 of this Bill against the applicant.

(4) The Institute through the Control Board shall not issue a Practicing Certificate to an applicant if it is satisfied that the applicant is not a fit and proper person to practise as a Certified Private Investigator.

(5) For the purposes of sub-section (1)(a) of this section the Institute may determine different fees according to such different factors as are specified in the determination.

#### **15. Duration of Practicing Certificate**

(1) A Practicing Certificate issued on application to a Certified Private Investigator:

(a) takes effect on issue or as the Institute through the Control Board specifies and

(b) remains in force for twelve months and is renewable for each successive twelve month period.

#### **16. Refusal, suspension or cancellation of Practicing Certificate**

1. The Institute through the Control Board may:

(a) refuse to issue;

(b) suspend, or

(c) cancel a Practicing Certificate,

applied for, or held by, a person who is in prison.

(2) The Institute through the Control Board may:

(a) refuse to issue;

(b) suspend, or

(c) cancel a Practicing Certificate,

applied for, or held by, a person, if that person:

(d) is bankrupt;

(e) applies to take the benefit of any law for the relief of bankruptcy or insolvent debtors; or

(f) compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

(g) this does not include any assignment under the Family Law Act.

(h) the conduct of his or her affairs as a Certified Private Investigator did anything that, in the opinion of the Control Board contributed to the situation referred to in sub-section (2)(i) of this section and amounted to unsatisfactory professional conduct.

(i) substantially breaches the Code of Conduct issued by the Institute through the Control Board, as amended from time to time, provided that proper notification of amendments has been given to financial members of the Institute, to their last supplied address, by either mail, facsimile transmission or by Email.

### **17. Register of Certified Private Investigators**

(1) The Institute through the Control Board shall, in such form as it thinks fit, keep a register of Certified Private Investigators. Each investigator will be issued with a national number.

(2) Any person shall be entitled to examine the register of Certified Private Investigators at any reasonable time, for information as permitted by the Control Board and the Institute may charge a fee for such information.

(3) The Institute through the Control Board shall ensure that the register of Certified Private Investigators is reasonably available for the purposes of sub-section (2).

(4) A Certified Private Investigator must at all times inform the Institute of any change of private or business address.

(5) The Institute through the Control Board may make a determination as to what action, if any, should be taken against any Certified Private Investigator who is in breach of this section or section 16.

### **18. Transitional**

A person who holds either a Private Inquiry Agent's license, a Commercial Agent's license under any existing State or Territory legislation shall be deemed to be a Certified Private Investigator until the Institute through the Control Board issues or refuses a Practicing Certificate with or without endorsement to that person.

### **19. Bona Fide of applicant**

(1) The Control Board if required, may authorise in writing, the Institute to inquire and establish the:-

(a) qualifications of a person for the specific endorsement for which the person has applied; or

(b) applicable financial viability of the person.

(2) The Institute through the Control Board may make a determination as to what action should be taken against any Certified Private Investigator who does not comply with the requirements of this section.

**20. Commissioners of Police to provide assistance**

(1) The Control Board may request the Commissioners of Police in any State or Territory to provide the Control Board with:

(a) information in the possession of the Police Service relating to a particular applicant for a Practising Certificate; and

(b) reasonable assistance for the purposes of making a determination with regard to an application for a Practising Certificate.

(2) Where an applicant is a member, or was a member, of any State, Territory Police or Federal Police shall provide the Control Board with:

(a) all personal and departmental files;

(b) all determinations made;

(c) reasons and details of all options for leaving the New South Wales Police Service;

(d) all files of any inquiry and findings of any Royal Commission into any State, Territory Police service or Federal Police and any offer of immunity or indemnity and any details of any immunities or indemnities given;

(e) all results of any inquiry by the New South Wales Independent Commission Against Corruption and any such inquiries in any State, Territory Police or Federal Police Service;

(f) all reports and findings of any Professional Integrity Branch investigations of any State, Territory Police Service or Federal Police,

relating to that applicant.

(3) The Commissioners of any State, Territory Police Service or Federal Police may charge a fee for information or assistance provided under this section.

(4) At the request of the Control Board any dispute regarding fees under sub-section (4) shall be determined by two (2) accountants nominated by the Institute of Chartered Accountants.

(5) The costs of a determination under sub-section (5) shall be shared equally by the any such Police Service and the Institute.

## **PART 4 - UNQUALIFIED PRIVATE INVESTIGATORS**

### **21. Person acting as a Certified Private Investigator**

Any person practicing as or conducting the business of a Private Investigator commits an offence against this Bill unless that person has been issued with a Practising Certificate under Part 3 of this Bill.

### **22. Unlawful representations**

(1) A person shall not falsely claim to be a Certified Private Investigator.

(2) A person shall not:-

(a) take or use a name, title, addition or description implying; or

(b) do anything, or permit or suffer anything to be done that holds out, advertises or represents;

that that person is qualified or authorised to practice as or conduct the business of a private investigator unless that person is a Certified Private Investigator.

(3) A person, corporation or government department shall not knowingly employ the services of a private investigator unless the private investigator is the holder of a current Practising Certificate issued under Part 3 of this Bill.

(4) A breach of this section shall constitute an offence against this Bill.

### **23. Limitation on other work**

(1) A person shall not directly or indirectly do any work as a private investigator for a fee unless that person is a Certified Private Investigator.

(2) Any person who is in breach of sub-section (1) of this section shall not be able to sue for any fees.

(3) If a person does any work as a Certified Private Investigator that relates to, or is done in conjunction with, any other work done by the person for a fee, it shall be presumed that the work as a Certified Private Investigator was done for a fee unless it is proved:

(a) that it was done without the person who did it receiving any advantage or benefit; and

(b) that it was not offered as an inducement to do other work.

(4) A breach of this section shall constitute an offence against this Bill.

## **PART 5 - INVESTIGATIONS**

### **24. Access to Information**

(1) During the course of an investigation a Certified Private Investigator may need information held by government departments, authorities and instrumentalities in order to:

- (a) determine, verify or clarify a certain set of facts;
- (b) assist a client in a proceeding or intended proceeding; or
- (c) for any legal purpose.

(2) Such information shall only be made available to a Certified Private Investigator who has been issued with an instrument of authority and a security registration number by the Control Board.

(3) Any attempt by a Certified Private Investigator to obtain such information for any purpose without having been issued with an instrument of authority and a security registration number by the Control board shall constitute professional misconduct.

(4) Any person, not being a Certified Private Investigator authorised under this section, who, or corporation which, attempts to obtain such information for any purpose shall be guilty of an offence against this Bill.

### **25. Applications for Search Warrants**

(1) Where a Certified Private Investigator is conducting an investigation for a client in order to determine, verify or clarify a certain set of facts or to assist a client for a proceeding, and has reasonable grounds to suspect that there are, or may be, on particular premises, documents which are relevant to the investigation and:-

- (a) which are reasonably likely to have a significant bearing on the result of the investigation; or
- (b) which the Certified Private Investigator has reasonable grounds to suspect may be destroyed or may not be produced on subpoena,

the Certified Private Investigator may:-

(c) lay before an authorised justice an information on oath or affirmation, setting out those grounds; and

(d) apply for the issue of a warrant to search the premises for those documents.

(2) On an application under sub-section (1), the authorised justice may require further information to be given by the Certified Private Investigator, either orally or by affidavit, in connection with the application.

(3) Where on application under sub-section (1), the authorised justice is satisfied that the requisite grounds do exist, the authorised justice may issue a warrant authorising the Certified Private Investigator, with such assistance, and by such force, as is necessary and reasonable:-

(a) to enter on or into the premises;

(b) to search the premises;

(c) to break open and search anything, whether a fixture or not, in or on the premises; and

(d) to take possession, or secure against interference, documents that appear to be any or all of those documents.

(4) If the authorised justice issues a warrant, the authorised justice shall set out on the information laid before him or her under sub-section (2) for the purposes of the application:-

(a) the grounds set out in the information; and

(b) particulars of any other grounds,

the authorised justice has relied on to justify the issue of the warrant.

(5) A warrant under sub-section (3) shall:-

(a) specify the premises and documents referred to in sub-section (1);

(b) state whether entry is authorised to be made at any time of the day or night or only during specified hours;

(c) state that the warrant ceases to have effect on a specified day that is not more than 7 (seven) days after the date of the issue of the warrant; or

(d) state the name of a solicitor acting for the client of the Certified Private Investigator or the name of a nominee of that solicitor.

(e) authorise the videoing of the search if the authorised officer is requested to do so or he or she thinks it necessary in the circumstances.

(6) A nominee of a solicitor named on a warrant under sub-section (5)(d) shall not be a Certified Private Investigator or an employee or agent of a Certified Private Investigator.

(7) A Certified Private Investigator shall not execute a warrant unless the Certified Private Investigator is accompanied by either:-

(a) the solicitor or the nominee of a solicitor named on the warrant under sub-section (5)(d); and

(b) a member of the New South Wales Police Service.

(8) Where under a warrant the Certified Private Investigator takes possession of the documents or secures documents against interference, the solicitor or nominee of the solicitor named on the warrant under sub-section (5)(d) shall make a record, on a form determined by the Control Board, of all documents of which possession has been taken or secured against interference.

(9) A solicitor or the nominee of a solicitor who makes a record under sub-section (8) shall attest on the record that the record is true and shall sign the record.

(10) A member of the New South Wales Police Service, who accompanied a Certified Private Investigator executing a warrant in relation to which a record has been made under sub-section (8), shall attest on the record that the member accompanied the Certified Practising Investigator and shall sign the record.

(11) Where pursuant to a warrant a Certified Private Investigator takes possession of documents or secures documents against interference the Certified Private Investigator may-

(a) inspect and make copies of, or take extracts from, any of the documents;

(b) use, or permit the use of, any of the documents for the purposes of a proceeding; and

(c) retain possession of the documents for so long as is necessary for the purpose of the investigation.

(12) A person shall not obstruct or hinder a Certified Private Investigator who is executing a warrant.

Penalty: 1000 Penalty Units or imprisonment for 6 (six) months or both.

(13) The occupier, or person in charge, of premises that a Certified Private Investigator enters under a warrant shall provide to that Certified Private Investigator all reasonable facilities and assistance for the effective exercise of his or her powers under the warrant.

Penalty: 200 Penalty Units or imprisonment for 3 (three) months, or both.

(14) A Certified Private Investigator shall only make a bona fide application for a warrant.

Penalty: 1000 Penalty Units or imprisonment for 6 (six) months or both.

(15) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(16) In this section:-

**"Authorised Justice"** means a Magistrate or a Justice of the Peace.

## **26. Investigation of Complaints**

(1) The Institute through the Control Board may conduct investigations when complaints are made to the Commonwealth Ombudsman, the Institute or the Control Board regarding any:-

(a) Certified Private Investigator;

(b) person; or

(c) corporation;

received for breaches of this Bill.

(2) A person authorised in writing by the Control Board may apply for a search warrant if the Control Board believes on reasonable grounds that any provision of this Bill has been contravened.

(3) An authorised Justice to whom such an application is made, may, if satisfied there are reasonable grounds for doing so, issue a search warrant authorising the person named in the warrant;

(a) to enter premises; and

(b) to exercise any function of the Control Board under this Bill.

(4) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(5) In this section:-

**"Authorised Justice"** means a Magistrate or a Justice of the Peace.

## **27. Persons required to be Certified Private Investigators**

(1) Unless excluded by this Bill, any person or corporation who oversees, requests, directs, authorises or conducts investigations, or collects debts on behalf of any person, organisation, registered business, or any other person or business, must be a Certified Private Investigator in the case of a person or a Private Investigator Corporation in the case of a corporation.

(2) Breach of this section constitutes an offence against this Bill.

## **28. Sharing of receipts or proceeds**

(1) A Certified Private Investigator shall not share with another person or corporation the receipts or proceeds of a business of the kind conducted by a private investigator unless-

(a) the other person is a Certified Private Investigator or the corporation is a Private Investigator Corporation; or

(b) the Control Board has first given its consent.

(c) is exempt under section 5 of this Bill.

(2) Failure to comply with sub-section (1) of this section shall constitute an offence against this Bill.

## **PART 6 - MISCONDUCT AND COMPLAINTS**

### **29. Person complained against deemed to be a Certified Private Investigator**

Where a complaint is made under this Part and the person against whom the complaint is made was at the time of the alleged conduct a Certified Private Investigator, but at the time that the complaint is made, is no longer a Certified Private Investigator, that person shall, for the purposes of this Part only, be deemed to be a Certified Private Investigator.

### **30. Complaints against a Private Investigator Corporation**

Where a complaint is made against a Private Investigator Corporation, such complaint shall be deemed to have been made against each Certified Private Investigator who is a director of the Private Investigator Corporation and shall be treated in accordance with the provisions of this Part.

### **31. Complaints**

(1) Any person may make a complaint to the Institute, the Commonwealth Ombudsman or the control Board alleging that a Certified Private Investigator is guilty of conduct which may constitute professional misconduct.

(2) A complaint shall:-

(a) be in writing on a form as determined by the Control Board;

(b) identify the complainant and the Certified Private Investigator against whom the complaint is made; and

(c) give particulars of the conduct that is alleged to have occurred.

(3) Any person who wishes to make a complaint shall, upon request, be provided with a form by the Institute as determined by the Control Board on which the complaint shall be made.

(4) The Institute shall refer any complaint made in accordance with this section to the Control Board and a copy of such complaint shall be forwarded to the Commonwealth Ombudsman who may conduct an investigation or refer to the Institute to conduct an investigation. Any report and findings by the Institute must be forwarded to the Commonwealth Ombudsman to be dealt with according to this Bill.

(5) The Control Board or the Institute by notice in writing served on the complainant, may require:-

(a) further particulars of any complaint to be given; and

(b) the complaint, or any further particulars, to be verified by Statutory Declaration, within such reasonable time as it may require in the notice.

### **32. Complaints made by the Control Board**

(1) Where the Control Board or Institute has reason to suspect that a Certified Private Investigator may be guilty of professional misconduct, the Executive Director or Deputy Executive Director of the Control Board shall make a complaint against that Certified Private Investigator in accordance with the requirements of section 31, a copy must be forwarded to the Commonwealth Ombudsman.

(2) A complaint made under this section shall be investigated according to the provisions of this Part.

(3) The Executive Director or Deputy Executive Director of the Control Board are immune from prosecution for any action he or she takes under this part, except where such action constitutes a criminal offence under the laws of any State or Territory of Australia or of the Commonwealth of Australia.

### **33. Investigation of complaints**

(1) (a) Where a complaint against an Investigator is received by the Control Board or the Institute, either shall advise in writing to the Certified Investigator against whom the complaint has been made, the nature of the complaint and seek in writing a reply to the complaint by that Certified Investigator.

(b) The Board shall allow such time as is reasonable for reply by the Certified Investigator against whom the complaint has been made.

(c) The Control Board may suspend the Practicing Certificate of a Certified Private Investigator who does not reply within the time for reply as determined by the Control Board.

(2) The Control Board shall cause an investigation to be conducted into a complaint made to it under this Part, unless that complaint has been dismissed according to section 34.

(3) For the purposes of causing an investigation to be conducted pursuant to this Part, the Control Board shall engage two (2) Certified Private Investigators to conduct investigations into the complaint.

(4) A Certified Private Investigator engaged under sub-section (3) shall not be the Certified Private Investigator against whom the complaint was made.

(5) On completion of an investigation pursuant to this section a report shall be submitted to the Control Board and the Commonwealth Ombudsman. Such report shall:-

(a) State whether, in the opinion of the Certified Private Investigators submitting the report, the complaint has been established against the Investigator including whether the Investigator is guilty of professional misconduct;

(b) State the reasons as to why the Certified Private Investigators submitting the report has formed the opinion that they have;

(c) State any other facts or information which are relevant to the complaint.

### **34. Summary dismissal of complaints**

(1) The Control Board may dismiss a complaint without further investigation:-

(a) If further particulars of the complaint are not given, or the complaint or the further particulars are not verified as required by the Control Board according to section 31, or

(b) if, in the opinion of the Control Board, the complaint is frivolous or vexatious.

(2) Under this section the Control Board must send a copy of the findings to the Commonwealth Ombudsman.

### **35. Decision of Control Board**

(1) If, after all Certified Private Investigators engaged under section 33 for a particular complaint have submitted reports and the Control Board is satisfied the Certified Private Investigator, person or corporation, against whom the complaint was made, is not guilty of an offence under this Bill or of professional misconduct, the Control Board shall dismiss the complaint.

(2) If, after all Certified Private Investigators engaged under section 33 for a particular complaint have submitted reports and the Control Board is satisfied the Certified Private Investigator, person or corporation, against whom the complaint was made, is guilty of an offence under this Bill, the Control Board shall take whatever action is required to be taken by this Bill, including the prosecution of the offence in a court.

(3) If, after all Certified Private Investigators engaged under section 33 for a particular complaint have submitted reports and the Control Board is satisfied the Certified Private Investigator, against whom the complaint was made, is guilty of professional misconduct, the Control Board may:-

(a) reprimand that Certified Private Investigator;

(b) suspend or cancel the Practicing Certificate of that Certified Private Investigator;

(c) may direct the Certified Private Investigator to repay any fee or part thereof, received from the complainant or any other person or corporation concerned with the complaint and the Certified Private Investigator shall comply with such a direction within a reasonable time as determined by the Control Board and;

(d) may direct the Certified Private Investigator to refund or pay any costs or losses incurred by the Control Board or Institute or the Indemnity Fund as a result of the investigation or the professional misconduct of the Certified Private Investigator and the Certified Private Investigator shall comply with such a direction within such reasonable time as determined by the Control Board.

(4) Under this section the control board must send a copy of the findings to the Commonwealth Ombudsman

### **36. Length of suspension of Practicing Certificate**

(1) The Control Board may make a determination in relation to the suspension or cancellation of a Practicing Certificate of a Certified Private Investigator.

(2) Where penalties set out in Schedule 3 are imposed by a court, the Control Board may cancel or suspend a Practicing Certificate as referred to in sub-section (1) as follows;

(a) up to three (3) months for a breach of section 19.

(b) up to twelve (12) months for a breach of sections 28, and 61.

(c) up to five (5) years for a breach of sections 21, 25, 37, 59, 63, and 64.

### **37. Professional misconduct**

A Certified Private Investigator shall be guilty of professional misconduct if that Certified Private Investigator:-

(a) Breaches the Code of Conduct issued by the Institute through the Control Board, as amended from time to time, provided that proper notification of any amendments to the Code of Conduct has been given to Certified Private Investigators to their last supplied address, by either mail, Email or facsimile transmission.

(b) Is found guilty of a breach of this Bill.

(c) Fails to-

(i) practice within a limitation imposed under section 12(1)(b); or

(ii) comply with a requirement imposed under section 12(1)(c) as directed by the Institute; or

(d) Is convicted of an indictable offence under any Bill.

(e) The Control Board may make a determination as to what action should be taken against any Certified Private Investigator who is found to be guilty of professional misconduct.

## **PART 7 - INSURANCE AND INDEMNITY**

### **38. Private Investigator Mutual Indemnity Fund**

(1) The Institute through the Control Board shall establish and administer and maintain the funds of the Certified Private Investigator Mutual Indemnity Fund.

(2) The Indemnity Funds shall consist of-

- (a) the money paid on account of the Indemnity Fund by Certified Private Investigators, either as annual contributions or levies under this Bill;
- (b) the money paid by the Control Board into the Indemnity Fund under section 9;
- (c) the money paid by a Certified Private Investigator on account of the Indemnity Fund under section 35;
- (d) interest or other income accruing from investment of the money in the Indemnity Fund;
- (e) any other money lawfully paid to the Indemnity Fund.

### **39. Separate bank account**

The Control Board and Institute shall maintain with an Bank a separate account with the name "Certified Private Investigators' Mutual Indemnity Fund" and shall pay to the credit of the account all money received on account of the Indemnity Fund.

### **40. Investment of Indemnity Fund**

Money in the Indemnity Fund that is not immediately required for the purposes of the Indemnity Fund may be invested:

- (a) in any manner in which trustees are authorised by the Trustee Act 1925 (NSW) to invest trust funds;
- (b) on deposit with the Treasurer of any State or Territory of Australia or of the Commonwealth of Australia;
- (c) in the purchase of securities or shares listed on a stock exchange in Australia;
- (d) in the acquisition of or an interest in real estate in Australia; or
- (e) in bills of exchange drawn, accepted or endorsed by a bank.

### **41. Payments from the Indemnity Fund**

(1) There shall be paid from the Indemnity Fund in such order as the Control Board decides:-

- (a) the expenses incurred by the Institute through the Control Board in administering the Indemnity Fund;

(b) the costs incurred by the Institute through the Control Board as a result of it exercising its functions or powers, or fulfilling its responsibilities, under section 9;

(c) the costs incurred by the Institute through the Control Board as a result of professional misconduct by a Certified Private Investigator or an investigation into alleged professional misconduct by a Certified Private Investigator under Part 6; and

(d) such other amounts as the Control Board determines.

#### **42. Contributions**

(1) A Certified Private Investigator is liable to pay to the Indemnity Fund an annual contribution of an amount determined by the Institute through the Control Board.

(2) The Control Board may:-

(a) divide Certified Private Investigators into classes determined by the Institute, and

(b) pursuant to sub-section (1) determine a different amount of annual contribution for each of the classes.

#### **43. Levies**

If the Institute through the Control Board is at any time of the opinion that the assets of the Indemnity Fund may be insufficient to meet its liabilities, the Institute through the Control Board shall impose on each Certified Private Investigator a levy payable on account of the Indemnity Fund.

#### **44. Failure to pay**

If after being given written notice, a Certified Private Investigator fails to pay any sum required under this Part, the Institute through the Control Board may suspend the Practising Certificate of that Certified Private Investigator until such time as the sum has been paid.

#### **45. Audit of Indemnity Fund**

The Indemnity fund shall be audited each financial year by an auditor approved by the Institute of Chartered Accountants.

## **PART 8 - PRIVATE INVESTIGATOR CORPORATIONS**

### **46. Corporations carrying on business as Private Investigators Corporation**

(1) a corporation shall not carry on the business of a Private Investigator Corporation unless it is issued with a license by the Institute.

(2) A corporation shall not carry on the business of a Private Investigator Corporation without being an associate member of the Institute.

(3) Failure to comply with this section constitutes an offence against this Bill.

### **47. Certification of Corporations**

Subject to this Bill, the Institute may issue a license to any corporation to carry on the business of a Private Investigator Corporation

### **48. Application for Certification**

(1) A Private Investigator Corporation may, before the certification of that corporation expires, apply to the Institute for a new certification.

(2) A corporation which is not a Private Investigator Corporation may at any time apply to the Institute for a certification.

### **49. Effect of Certification**

A Certification issued to a corporation may:-

(a) entitle that corporation to carry on the business of a Private Investigator Corporation; and

(b) set conditions under which that corporation may carry on the business of a Private Investigator Corporation;

(c) such conditions may be set in any manner determined by the Institute.

### **50. Refusal of Certification**

(1) The Institute may refuse to issue a certification if an application:-

- (a) is not accompanied by a fee of such amount as is determined by the Institute;
- (b) is not accompanied by, or does not contain such information as may be determined by the Institute;
- (c) is made by a corporation that is under official management, receivership or liquidation;
- (d) is made by a corporation which is the holder of a suspended certification;
- (e) is made by a corporation of which there is one or more directors who are not Certified Private Investigators, unless exempted by the Institute through the Control Board;
- (f) is made by a corporation of which a current or former:-
  - (i) director;
  - (ii) officer;
  - (iii) agent; or
  - (iv) employee

has had a finding of professional misconduct made and recorded against him or her according to this Bill.

(2) The Institute shall not issue a certification to a corporation if it is not satisfied that the directors or shareholders of that corporation are fit and proper persons to carry on the business of a Private Investigator Corporation.

### **51. Effect of certificate**

- (1) A certificate issued on application by a corporation:-
  - (a) takes effect on issue or such other date as is specified on the certificate.
  - (b) remains in force for twelve months after the first renewal and is renewable for each succeeding twelve month period.

### **52. Suspension or cancellation of certificate**

- (1) The certificate of a Private Investigator Corporation shall be cancelled if that corporation is wound up.
- (2) The Institute through the Control Board shall have the power to arbitrate any dispute between directors of corporations in any matter relative to this Bill.

(3) The Institute through the Control Board may suspend or cancel the certificate of a corporation if:-

(a) that corporation is placed under official management, receivership or liquidation;

(b) that corporation contravenes any section of any Bill or breaches any other law;

(c) one or more directors of that corporation are not Certified Private Investigators;

(d) the Practicing Certificate of any former or current:-

(i) director;

(ii) officer;

(iii) agent; or

(iv) employee,

of that corporation is suspended or cancelled for any reason or an application by such a person for a Practicing Certificate is refused for any reason; or

(e) that corporation fails to comply with a condition of its certification imposed in accordance with section 49 of this Bill,

(f) that corporation fails to become a financial associate member of the Institute.

### **53. Register of private Investigator Corporations**

(1) The Institute through the Control Board shall, in such form as it thinks fit, keep a register of Private Investigator Corporations.

(2) Any person shall be entitled to inspect the register of Private Investigator Corporations during accepted normal business hours and the Institute may charge a fee for such an inspection.

### **54 . Bona Fide corporations**

(1) Either before or after the issue of a certificate the Control Board may authorise the Institute in writing to inquire into and establish:-

(a) the bona fides of a corporation for the specific certificate conditions for which the corporation has applied; or

(b) the financial viability of the corporation.

(2) Should a corporation refuse to comply with this section the Control Board may suspend any certificate issued to that corporation until such time that the Control Board's requirements are complied with.

## **55. Commissioners of Police to provide assistance**

(1) So that the Institute and the Control Board may comply with the requirements of this Bill, the Commissioners any state, Territory and federal Police Services shall provide the Control Board with:-

- (a) information in the possession of such Police Service relating to a particular corporation and its directors and shareholders who apply for a license; and
- (b) reasonable assistance for the purposes of making a determination with regard to an application for a corporation Certificate
- (c) if a director of a corporation applying for a corporation certificate was a former member or is a present member of any State, Territory and Federal Police Service then the Commissioners or their delegate, on application shall provide in respect of that person:-
  - (i) all personal and departmental files;
  - (ii) all determinations made;
  - (iii) reasons and details of all options to leave the New South Wales Police Service;
  - (iv) all files of any inquiry and findings of any Royal Commission into any State, Territory Police service or Federal Police and any offer of immunity or indemnity and any details of any immunities or indemnities given;
  - (v) all results of any inquiry by the New South Wales Independent Commission Against Corruption and any such inquiries in any State, Territory Police or Federal Police Service;
  - (vi) all reports and findings of any Professional Integrity Branch investigations of any State, Territory Police Service or Federal Police,

(3) The Commissioners of any State, Territory and Federal Police Services shall, where possible, under any agreement, supply information to the Control Board of members of any State, Territory or Federal Police forces, information as specified in this section.

(4) The Commissioners of any State, Territory and Federal Police Services may charge a fee for information or assistance provided under this section.

(5) At the request of the Control Board any dispute regarding fees under sub-section (4) shall be settled by two (2) Accountants nominated by the Institute of Chartered Accountants.

(6) The costs of a determination under sub-section (5) shall be shared equally by any State, Territory and Federal Police Service and the Institute.

#### **56. Institute and Control Board not to divulge information**

(1) No person associated with or employed by the Institute or the Control Board shall divulge any information or detail which becomes the confidential knowledge of the Institute or the Control Board regarding corporations or individuals, without the consent of the corporation or individual or the Institute or Control Board.

(2) Failure to comply with this section shall constitute an offence against this Bill.

#### **57. Offence by corporation or officers**

(1) A corporation shall not make any representation or imply in any way that the corporation is qualified or entitled to carry on the business of a Private Investigator Corporation unless that corporation is a Private Investigator Corporation.

(2) A director, officer or employee of a corporation shall not:-

(a) do anything of a kind, or do anything in a manner; or

(b) cause the corporation to do anything of a kind, or in a manner,

that is calculated to imply that the corporation is a Private Investigator Corporation.

(3) Failure to comply with this section shall constitute an offence against this Bill.

#### **58. Clients and investigations of a Private Investigator Corporation**

Where a Certified Private Investigator is or was a director, officer, agent or employee of a Private Investigator Corporation and that Certified Private Investigator conducts an investigation in his or her capacity as a director, officer, agent or employee for a client of the Private Investigator Corporation, then for the purposes of this Bill:-

(a) the client of the Private Investigator Corporation shall be deemed to be the client of the Certified Private Investigator; and

(b) the investigation being conducted shall be deemed to be the investigation of the Certified Private Investigator, as if the Certified Private Investigator was not conducting the investigation in his or her capacity as a director, officer, agent or employee of the Private Investigator Corporation, as well as being the investigation of the Private Investigator Corporation.

#### **59. Corporations to make payments**

Where a Certified Private Investigator is a director, officer, agent or employee of a Private Investigator Corporation and the Certified Private Investigator is required to make any payment of money under this Bill and:-

- (a) the Certified Private Investigator fails to make that payment; or
- (b) the Control Board has reasonable grounds to suspect that the Certified Private Investigator will not make that payment;

the Control Board may direct the Private Investigator Corporation to make that payment and the Private Investigator Corporation shall comply with such a direction.

## **PART 9 - FEES**

### **60. Certified Private Investigators and Private Investigator Corporation fees**

The Institute through the Control Board shall establish a recommended minimum scale of fees chargeable by a Certified Private Investigator or a Private Investigator Corporation in respect of any matter or class of matters. This will be in line with the Code of Practice for Private Investigators in Australia (CPPIA)

### **61. Determinations in respect of fees**

- (1) A Certified Private Investigator or a Private Investigator Corporation shall comply with determinations of the Control Board made under this Part.
- (2) Failure to comply with any determination made by the Institute or the Control Board in respect of fees shall constitute an offence against this Bill.

### **62. Disputed fees**

- (1) A Certified Private Investigator or Private Investigator Corporation may refer to the Institute through the Control Board any dispute relating to fees.
- (2) Any client of a Certified Private Investigator or Private Investigator Corporation the subject of a fees referral under sub-section (1) of this section may request the Institute through the Control Board to assess any matter relating to disputed fees.
- (3) The Institute through the Control Board shall make a determination in respect of any disputed fees referred to it pursuant to this section.
- (4) If a determination by the Institute through the Control Board establishes that a Certified Private Investigator or Private Investigator Corporation has charged

excessive fees, these fees shall be refunded to the client by the Certified Private Investigator or Private Investigator Corporation.

(5) If the Certified Private Investigator or Private Investigator Corporation is unable or fails to repay the excessive fees as determined by the Institute through the Control Board, the Institute may pay those fees to the client from the Indemnity Fund.

(6) Any fees paid by the Institute to a client of a Certified Private Investigator or Private Investigator Corporation from the funds of the Indemnity Fund may be recovered by the Institute in a court of competent jurisdiction.

## **PART 10 - TRUST ACCOUNTS**

### **63. Money received**

(1) Where a Certified Private Investigator or a Private Investigator Corporation receives money for or on behalf of a client, the Certified Private Investigator or the Private Investigator Corporation shall:-

(a) hold the money exclusively for the client; and

(b) pay the money into a trust account established with a bank in New South Wales, whether general or separate, in the name of the Certified Private Investigator or the Private Investigator Corporation.

(2) Money paid into a trust account under this section shall only be dealt with by the Certified Private Investigator or Private Investigator Corporation according to the written directions of the client.

(3) Nothing in this section shall be construed to take away or affect any enforceable lien or claim that a Certified Private Investigator or Private Investigator Corporation has to any money.

(4) Any Certified Private Investigator or Private Investigator Corporation who is required under this Bill to keep a trust account and have money in that trust account and who indicates in any way that there is no money in such trust account, shall be immediately suspended pending an inquiry by the Institute.

(5) Failure to comply with the provisions of this section constitutes an offence against this Bill.

### **64. Keeping of accounts**

(1) A Certified Private Investigator or a Private Investigator Corporation shall keep account of all money which is required to be dealt with in accordance with this Part

and such accounts shall be kept in such a manner as to disclose the true position in relation to that money and to enable the accounts to be conveniently and properly audited.

(2) The Institute through the Control Board may at any time make a direction to a Certified Private Investigator or a Private Investigator Corporation:-

(a) with respect to the manner in which accounts under this section are to be kept; and

(b) requiring that an audit of accounts kept under this section be conducted within a nominated time by a nominated auditor.

(3) Failure to comply with the provisions of this section constitutes an offence against this Bill.

### **65. Relief for bankers**

(1) A bank does not, in relation to a transaction on a trust account kept by a Certified Private Investigator or a Private Investigator Corporation at that bank or any other bank:-

(a) incur any obligation to make inquiries, or any liability, other than an obligation or liability to which it would be subject apart from this Bill; and

(b) have imputed to it any knowledge of the right of a person or corporation to money credited to it.

(2) A bank at which a Certified Private Investigator or a Private Investigator Corporation keeps a trust account has no recourse against money at credit in the trust account in respect of a liability of the Certified Private Investigator or Private Investigator Corporation to that bank other than a liability in respect of the account.

(3) In sub-section (2)-

**"recourse"** includes any right, whether by way of set-off, counter-claim or charge or otherwise.

### **66. Power of Court to appoint receiver in certain cases**

Where the court on application made by the Control Board is satisfied:

(a) that any defalcation has been or may have been committed in relation to any trust account of any Certified Private Investigator; or

(b) that through:

(i) the mental or physical incapacity of a Certified Private Investigator;

- (ii) the death or insolvency or the sequestration or assignment for the benefit of creditors of the estate of a Certified Private Investigator;
  - (iii) the abandonment of a Certified Private Investigator's business;
  - (iv) a Certified Private Investigator, having been disqualified from holding a Practicing Certificate or
  - (v) the Practicing Certificate of a Certified Private Investigator having been cancelled or a Certified Private Investigator's application for a renewal of a Practicing Certificate having been refused,
- any person is unable to obtain payment or delivery of money held for or on behalf of that person by the Certified Private Investigator, the court may appoint a receiver of all or any property which is held by the Certified Private Investigator.

## **PART 11 - APPEALS**

### **67. Constitution of Appeal Board**

(1) There is constituted by this Bill a board with the name Private Investigator Appeal Board.

(2) The Appeal Board:-

(a) has and may exercise the functions conferred or imposed on it by or under this or any other Bill; and

(b) does not, for any purpose, represent the Crown.

### **68. Membership of the Appeal Board**

(1) The Appeal Board shall consist of 6 members.

(a) Three (3) are to be nominated by the Institute, of whom 1 is to be a retired or current Justice of the Supreme Court or a retired or current Judge of the District Court or a Federal Court Judge;

(b) One (1) is to be nominated by the Law Council of Australia

(c) One (1) is to be nominated by the Federal Attorney-General.

- (d) One (1) person a member of the public, nominated by Minister for Justice.
- (2) The number of members for a hearing of the Appeals Board shall be three (3).
- (3) A member of the Control Board shall not be a member of the Appeal Board.
- (4) Schedule 2 has effect with respect to the Appeal Board.

**69. Appeal against refusal, suspension or cancellation of Practicing Certificate or Certificate**

(1) If the Control Board:-

(a) refuses to issue a Practicing Certificate or Certificate; or

(b) refuses to issue an endorsement for any particular category of Practicing Certificate or Certificate,

the person or corporation who or which applied for that Practicing Certificate or Certificate may appeal against the decision of the Control Board only to the Appeal Board.

(2) If the Control Board suspends or cancels a Practicing Certificate or Certificate the Certified Private Investigator or Private Investigator Corporation may appeal against the determination of the Control Board only to the Appeal Board.

**70. Control Board to provide statement**

(1) When an appellant appeals to the Appeal Board, the Control Board shall provide the Appeal Board with a written statement detailing the reasons as to why the Control Board made the determination it did.

(2) A copy of any determination of the Appeal Board shall be made available to an appellant.

**71. Decision of Appeal Board**

(1) The Appeal Board may allow or dismiss an appeal brought to it.

(2) The Appeal Board shall allow an appeal only if the Appeal Board is satisfied that the Control Board in making the determination appealed against:-

(a) made an error as to some significant and relevant fact; or

(b) did not, due to no fault of the appellant, receive some significant and relevant information.

(3) If the Appeal Board allows an appeal:-

(a) the Appeal Board shall provide the Control Board with a written statement detailing the reasons as to why the Appeal Board allowed the appeal; and

(b) the Control Board shall reconsider the determination appealed against and shall consider any written recommendations regarding any determination the Appeal Board may make.

(4) A decision of the Appeal Board is final and may only be subject to review by the Supreme Court of NSW on matters of law.

## **PART 12 – OVERSIGHT**

### **72 . Ombudsman**

The Federal Ombudsman shall have an oversight of the Control Board, Appeal Board and the Australian Institute of Private Detectives Ltd.

(1) In the case of any complaint by a complainant against any Certified Private Investigator or Private Investigator Corporation.

(2) The Control Board through the Institute must inform the Ombudsman of any and all complaints and the results of those complaints.

(3) The Ombudsman may at any time conduct its own investigation of any complaint made by any individual or corporation.

(4) The Institute through the Control Board must give all assistance to the Ombudsman in his/her investigations.

## **PART 13 - MISCELLANEOUS**

### **73. General penalty provision**

(1) A person who:

(a) does an act or thing that the person is forbidden to do by or under a provision of this Bill;

(b) does not do an act or thing that the person is required or directed to do by or under a provision of this Bill; or

- (c) otherwise contravenes a provision of this Bill; or
- (d) is in breach of a determination of the Control Board.

is guilty of an offence against this Bill.

(2) A person who is guilty of an offence against this Bill, is punishable on conviction by a penalty not exceeding the penalty applicable to the offence.

(3) Where:

(a) sub-section (1) operates in relation to a provision of this Bill so as to make a person guilty of an offence; or

(b) a provision of this Bill provides that a person is, in circumstances referred to in the provision, guilty of an offence;

and a penalty is set out in Schedule 3 immediately under a heading referring to that provision or provisions in which that provision is included, a penalty applicable to an offence, is the penalty so set out.

(4) Except as provided in Schedule 3 the penalty applicable to the offence is a fine of 80 penalty units

#### **74. Penalties for corporations**

Where a corporation is convicted of an offence against this Bill, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

#### **75. Ceasing to act under this Bill**

(1) Any person who ceases to function in accordance with this Bill shall be required to deposit with the Institute all files, notes videos, photographs, film or relevant material for the benefit of the client or clients of that person.

(2) Where a Certified Private Investigator becomes deceased, the executor of that person shall be required to deposit with the Institute all files, notes videos, photographs, film or relevant material for the benefit of the client or clients of the Certified Private Investigator.

#### **76. Civil Remedy not affected by proceedings for an offence**

Notwithstanding any proceedings against any person for an offence against this Bill (whether resulting in a conviction or otherwise) such person shall remain liable to all

proceedings in like manner as if the proceedings for an offence had not been taken.

## **SCHEDULE 1 - CONTROL BOARD POWERS**

### **Terms of Office**

1. Subject to this Schedule, a member of the Control Board shall hold that position until:

(a) that member's nomination is withdrawn; and

(b) a new member is nominated in that member's place or that member is re-nominated;

by the body or person that nominated that member under Part 2.

### **Filling of vacancy**

2. If the position of a member of the Control Board becomes vacant the body or person that nominated that member shall nominate a new member as soon as practicable.

### **Vacancies**

3. The position of a member of the Control Board shall become vacant if that member;

(a) dies;

(b) absents himself or herself from 3 consecutive meetings of the Control Board of which reasonable notice has been given to that member personally or in the ordinary course of post;

(c) is nominated as a member of the Appeal Board; or

(d) contravenes a section of this Bill.

### **Re-nomination**

4. A member of the Control Board whose position becomes vacant shall not be re-nominated for that position or nominated for any other position of the Control Board.

### **Funding**

5. (1) The Indemnity Fund shall provide funding for the Control Board.

(2) The funding shall be;

(a) reasonable; and

(b) granted at reasonable times, to enable the Control Board to exercise its functions under this Bill.

(3) The Control Board shall use any fee received by it under this Bill for the purposes of exercising its functions under this Bill, or as the Control Board determines.

### **Remuneration**

6. A member of the Control Board is entitled to be paid remuneration by the Indemnity Fund, as assessed by two (2) Accountants nominated by the Institute of Chartered Accountants, which shall consist of an annual retainer and fees for Board attendances.

### **General Procedure**

7. The procedure for the calling of meetings of the Control Board and for the conduct of business at those meetings shall, subject to this Bill, be as determined by the Chairman of the Control Board or in his absence, the Deputy Chairman.

### **Executive Director**

8. (1) The Executive Director of the Institute shall be the Chairman and Executive Director of the Control Board.

(2) The Executive Director of the Institute shall appoint a Deputy Executive Director.

(3) In the absence of the Executive Director of the Institute the Deputy Executive Director of the Institute shall assume the position of Executive Director of the Institute and Chairman of the Control Board.

(4) The Board of the Institute shall form a contract with the Executive Director which shall deal with;

(a) the terms of office of the Executive Director;

(b) the manner or manners in which the office of the Executive Director may become vacant; and

(c) the remuneration of the Executive Director.

(5) The terms of the contract under sub-clause (4) shall, to the extent of any inconsistency, override the provisions of clauses 1, 3 and 4 of this Schedule.

### **Presiding Member**

9. The person presiding at a meeting of the Control Board has a deliberative vote and, in the event of an equality of votes, has a second and casting vote.

### **Voting**

10. A decision or determination supported by a majority of the votes cast at a meeting of the Control Board at which a quorum is present shall be the decision or the determination of the Control Board.

#### **Minutes**

11. The Executive Director shall cause full and accurate minutes to be kept of the proceedings in each meeting of the Control Board.

#### **Probity**

12. A person may sit as a member of the Control Board, providing that person has not had a sustained criminal conviction recorded against his/her name.

#### **Meeting**

13. The Executive Director of the Control Board shall call meetings of the Control Board whenever and in such manner as the Executive Director thinks fit.

#### **Quorum**

14. Seven members of the Control Board shall constitute a quorum at a meeting of the Control Board.

## **SCHEDULE 2 - APPEAL BOARD**

#### **Terms of office**

1. Subject to this Schedule, a member of the Appeal Board shall hold that position for a period of three years.

#### **Filling of vacancy**

2. If the position of a member of the Appeal Board becomes vacant the body or person that nominated that member shall nominate a new member as soon as practicable.

#### **Vacancies**

3. The position of a member of the Appeal Board shall be deemed to be vacant if that member;

(a) dies;

(b) absents himself or herself from 4 consecutive meetings, without reasonable excuse, of the Appeal Board of which reasonable notice has been given to that member personally or in the ordinary course of post;

(c) is nominated as a member of the Control Board; or

(d) contravenes a provision of this Bill.

(e) is declared a bankrupt.

(f) is certified as insane.

### **Re-nomination**

4. A member of the Appeal Board whose position becomes vacant shall not be re-nominated for that position or nominated for any other position of the Appeal Board.

### **Funding**

5. (1) The Indemnity Fund shall provide funding for the Appeal Board.

(2) The funding shall be-

(a) reasonable; and

(b) granted at reasonable times,

to enable the Appeal Board to exercise its functions under this Bill.

### **Remuneration**

6. A member of the Appeal Board is entitled to be paid remuneration by the Indemnity Fund, as assessed by two (2) Accountants nominated by the Institute of Chartered Accountants, which shall consist of an annual retainer and fees for Board attendances.

### **General Procedure**

7. The procedure for the calling of meetings of the Appeal Board and for the conduct of business at those meetings, shall, subject to this Bill, be as determined by the Chairman of the Appeal Board, or in his absence the Deputy Chairman.

### **Chairman**

8. (1) The Control Board shall nominate a member of the Appeal Board to be the Chairman of the Appeal Board.

(2) The Chairman shall hold that position until he/she resigns from that position or ceases to be a member of the Appeal Board

(3) If the Chairman resigns from that position or ceases to be a member of the Appeal Board, the Control Board shall nominate a new Chairman under this Schedule as soon as practicable.

#### **Presiding Member**

9. (1) The Chairman of the Appeal Board or, in the absence of the Chairman, another member of the Appeal Board elected by the members present, shall preside at a meeting of the Appeal Board.

(2) The person presiding at a meeting of the Appeal Board has a deliberative vote and, in the event of an equality of votes, has a second and casting vote.

#### **Voting**

10. A decision or determination supported by a majority of the votes cast at a meeting of the Appeal Board at which a quorum is present shall be the decision or the determination of the Appeal Board.

#### **Minutes**

11. The Appeal Board shall cause full and accurate minutes to be kept of the proceedings in each meeting of the Appeal Board.

#### **Probity**

12. A person may sit as a member of the Appeal Board, providing that person has not had a sustained criminal conviction recorded against his/her name.

#### **Meeting**

13. The Chairman of the Appeal Board shall call meetings of the Appeal Board in writing and at a specified time and place.

#### **Quorum**

14. Four members of the Appeals Board shall constitute a quorum of a meeting of the Appeals Board.

## **SCHEDULE 3 - PENALTIES**

### **Section 13**

Penalty: 500 penalty points

### **Section 17**

Penalty: 50 penalty points

**Section 19**

Penalty: 100 penalty points

**Section 21**

Penalty: 1000 penalty points.

**Section 22**

Penalty: 1000 penalty points and/or six months gaol

**Section 23**

Penalty: 500 penalty points

**Section 24**

Penalty: 1000 penalty points

**Section 27**

Penalty: 1000 penalty points

**Section 28**

Penalty: 500 penalty points

**Section 46**

Penalty: 1000 penalty points

**Section 56**

Penalty: 1000 penalty points

**Section 57**

Penalty: 1000 penalty points

**Section 59**

Penalty: 500 penalty points

**Section 61**

Penalty: 1000 penalty points

**Section 63**

Penalty: 1000 penalty points

**Section 64**

Penalty: 1000 penalty points