

# Historical Research Article

## “A NECESSARY BUT DANGEROUS CLASS”: EARLY PRIVATE INVESTIGATORS IN AUSTRALIA

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From the 1880s private investigators begin to appear on the Australian legal landscape. Commonly known as private detectives the name itself proves contentious. Private investigations in Australia is a profession built on divorce laws which focused on finding fault. In such a social climate private investigations become an unwelcomed necessity. Without regulation or licencing private investigators tend to adopt dubious practices such as blackmail, trespass and perjury. Calls to regulate the industry came early from the judiciary which had come accustomed to private investigators giving evidence. It took legislators a little over sixty years to begin introducing regulation and licencing. The delay is in part because Police refused to acknowledge such a profession existed. By licencing and regulating the occupation, it gave it legitimacy and set the foundations for a more professional class.

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Private investigators in Australia have never enjoyed great prominence. Europe can boast Eugène François Vidocq, perhaps the world’s first private investigator; and the United States had Allan Pinkerton, Chicago’s first police detective and founder of the famous Pinkerton’s National Detective Agency. But Australia does not have such illustrious beginnings. It is difficult to know who Australia’s first private investigator was.

Private investigators (or *private detectives* as they were originally referred) begin to appear before the Australian courts as witnesses and defendants as early as 1889. Into the early Twentieth Century the Australian private investigators, for a fee, were embroiled in divorces, perjury, and trespass. Treated with suspicion by judges and ridiculed by police—early private investigators operated in an

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unrecognised ill-defined field of work sometimes occupied by conmen, blackmailers and criminals. Early investigations work without regulations and licencing meant private investigators were operating in legal shadows. Private investigators were taking cases that were of no interest to police but important for those involved in civil suites and divorce proceedings. This exemplar of early perceptions and behaviours of private investigators illustrates the justification for licencing and training which would be introduced over the later part of the Twentieth Century. Nevertheless, it also seeks to conclude with a suggestion that future private investigators are better educated, equipped with stronger powers (accompanied with oversight) and develop a better working relationship with police.

Little has previously been written on private investigators in Australia. One important work on the topic is written by Prenzier and King for the Australian Institute of Criminology (2002). The article provides a working snap shot of the industry at the turn of the Twenty-First Century and poses some important questions about the future of the industry. Particularly, possible relationships between private investigators and police. The work of Prenzler and King provide a means to begin discussing the future role and expectations of private investigators. Aside from the work of Prenzler and King contemporary published material on investigations tends to be aimed at practitioners or is found in popular detective fiction literature.

There has been little, if any, historical inquiry into private investigators in Australia. Examining newspapers and court reporting from 1889 to the 1950s provides a cursory insight into the early work of private investigators in Australia. Newspapers as a source has limitations in terms of accuracy and some of the articles tend to be sensationalist, but the consistent stories about the investigations profession in newspapers does give an insight into the police, public and judicial perceptions of private investigators during the period and clearly indicates investigators in Australia had rightly or wrongly been a mistrusted class of professionals.

By examining aspects of real Australian private investigations during the early Twentieth Century it becomes apparent that fault based divorce is a driving factor for the expansion of the investigations industry. In 1901 there were 398 divorces allowed and in 1925, 1,888. By 1955 there were 6,724 (Australian Historical Statistics and ABS). The rise in divorce was seated within laws that required proof of infidelity or mistreatment. Naturally, this increased the activity

of investigations work. With a rise in divorce in Australia we find the private investigations industry an unregulated and unlicensed entity. Subsequently, it is within this context we see the industry occasionally behaving at its worse. Contemporary practitioners of private investigations may find the boldness of early investigators breathtaking. Others, however, may appreciate why there were moves to regulate the industry to standards that exist today. But it is surprising that it took so long for regulation and licensing to come into law. An emerging theme stemming from this examination of early investigations work in Australia is the credibility of investigators.

The investigator is paid to find evidence and therefore a constant concern, particularly in the divorce courts, was that the evidence provided by investigators would most likely be biased. Without cameras or video footage, like today, early investigators relied predominately on their creditability and reputation as a witness. Part of the brief for lawyers cross-examining the testimony of private investigators was to discredit the investigator's professional standing. Subsequently, the character of investigators was commonly at the centre of evidence. Yet, even today, it is the character of private investigator which is central to much their work. Therefore, it is through regulation and licencing that the profession gains a better standing.

Without licensing or registration of private investigators it is difficult to know exactly how many were operating in the Australian colonies at the end of the Nineteenth Century. However, there must have been a reasonable number in the field for Colonial Chief Justices to start marking public remarks about the behaviour and reliability of private investigators. In 1893, a New South Wales (NSW) state Chief Justice told the *National Advocate* newspaper he would never accept the evidence of a private investigator if it was not collaborated by someone else. While the evidence provided by the private investigator was suspiciously viewed by Judges other private investigators were out rightly accused of perjury. In 1893, a private investigator was sentenced to one month's prison for intimidating a witness. As part of the Victorian Chief Justice's deliberations on the perjury matter he stated there was a need for licensing "private detectives" (Bendigo Advertiser, 1883, p.2). His concern that many who had entered the private investigator profession were simply discharged convicts without good character or unblemished reputations.

The private investigators' role in organising witnesses to commit perjury was of grave concern to the Chief Justice. The practice was known as "ready up."

This involved a private investigator working a divorce case and finding a witness that would be willing to perjure themselves to in court. The witnesses would be encouraged to substantiate grounds for divorce which would include providing witnessed accounts of adultery, desertion, cruelty, habitual drunkenness, or insanity (Donaldson, 2004, p.1). Early private investigators were also criticised for using decoys when working on divorce cases. In 1889, a New South Wales (NSW) Judge was presiding over a divorce case. During the case it emerged that the woman seeking a divorce used the services of a private investigator who organised and paid a young woman (the decoy) to have sexual intercourse with her husband. By using the decoy the woman would be able to prove adultery. The young woman (the decoy) was cross-examined during the proceedings and the ploy discovered. The presiding judge used the opportunity to let private investigators know that manufacturing evidence would be viewed as criminal conspiracy (Sydney Mail, 1889, p. 12). Some private investigators, nevertheless, were consciously aware of the value of their reputations and would go to lengths to protect their character. One such example was in 1908. A Melbourne based private investigator, William Moncrieff, was charged with encouraging an aggrieved wife to commit perjury. It was alleged he encouraged the wife to bring false charges against her husband (who happened to be a police officer) saying he left her taking some gold and jewellery. Moncrieff in giving evidence obviously refuted the accusations. But interestingly, he was keen to get to court to prove his innocence, stating that he did not want to be discharged on lack of evidence from the persecution but rather on his own strength. Moncrieff was acquitted (Geelong Advertiser, 1908, p. 5).

Into the early Twentieth Century, the judiciary continued their call for regulation. The judiciary were critical of the character of those practicing as private investigators but governments at a state or the new federal level had yet to act on reforming the industry. A New South Wales judge heard, during a divorce trial in 1907, how the husband paid a private investigator to reside at his wife's boarding house to obtain evidence for a divorce. As the judge heard evidence on the antics of the private investigators in the boarding house he made his concerns felt. The judge, stated private investigators, "...belong to a very dangerous class and should they be watched... but they are a necessary class...carrying out unpleasant duties... they are not a class that has much respect from the community" (Goulburn Herald, 1907, p. 4). It is worth noting, the private investigator was paid £2 per week for the boarding house job. This was just two shillings short of what

Justice Higgins had recommended, in the same year, when he brought down his Harvester Case decision, which set the Australian minimum wage for unskilled labourers at £2 and 2 shillings per week.

The 1920s and 1930s have been described as the golden age of detective fiction in Australia, Britain, and the United States (Symons, 1993). Dorothy Sayers and Agatha Christie are, arguably, most renowned for their interwar detective novels. However, such an interest did little to improve the perception of real private investigators. Rather, the fiction gave private investigators an unnecessary mystique. In fiction as in reality it was predominately men (often former police officers) who undertook investigations work. However, in 1925 there is some evidence to suggest there was at least one woman working in Queensland. Mrs Kate Condon, described by the newspaper as a ‘neat little thing’ was apparently favoured by Chief Justices. The private investigator had won the confidence of the courts with her testimony and reliability. During one divorce trial she recounted how she had chased a man she was trailing over four fences as he attempted to run away. When asked how she managed to jump the fences she replied to her cross-examiner... “It is quite easy for me. I will show you sometime if you are interested” (The Western Champion, 1925, p. 15).

For Australian private investigators the 1920s saw an ongoing campaign to register their activities. There was also some concern raised by police that there was something insincere about investigators using the term *private detective*. In 1922, an opinion piece in the *Newcastle Morning Herald* argued that investigators using the word *detective* represent a status they did not possess. The article suggested that the word *detective* be prohibited for only those serving in the police force (Newcastle Morning Herald, 1922, p.4). The NSW Inspector General of Police also contributed to the debate by saying police detectives under his command resented private investigators using the term *detective*. He supported the move to renaming them to *inquiry agents* (Daily Examiner, 1922. p.2). As an aside, Prunckun (2013, pp. 9–10) says, “In contemporary practice, the term *detective* is usually reserved for sworn police offices, whereas the term *investigator* is used for those occupations other than police—for instance, private investigators and investigators who may be employed in government regulation and compliance work. ... Today, one of the many designations [of the term *investigator*] is that of *inquiry agent*.” Under current Australian licencing laws, *inquiry agent* is the term used today. An editorial in the Queensland based newspaper *The Chronicle* published in 1922 takes a similar view about the use of

the word *detective*, but also argues that many in the investigations industry are criminals and greater regulation is required.

Further callings from the judiciary to register and licence investigators are made in 1924 (The Truth 1924, p.8). A Queensland State Chief Justice Mr McCawley appeared to lead the push for better regulation. He acknowledges that the private investigator has a place in society but is critical of the types of characters it tends to attract. Citing the common occurrences of blackmail, he argued that licencing and registration would give the investigations industry a better standing in the community (The Brisbane Courier, 1924, p.6). It was reasoned greater credibility for the profession through registration or licencing would give better standing to the evidence supplied by private investigators. Further, the judiciary believed that because anyone could commence work as a private investigator all evidence required close scrutiny (The Brisbane Courier, 1926, p.6).

In 1924, The *Truth* Newspaper ran a large exposé on the role of private investigators in divorce cases. It highlighted that private investigators at this time were earning £1 and 1 Shilling per day (The Truth, 1924, p.8). The average weekly wage at this time was a little over £3. The article was particularly critical of an activity undertaken by some private investigators known as a “chair report”. A “chair report” involved the private investigator being paid to watch a spouse. The private investigator would then orally brief the client from their office—“the chair”—stating they had seen the spouse with another person but was unable to get evidence without breaking the law. But for an additional fee the private investigator would be willing to break the law and promised to get the evidence within the next few days. The private investigator in reality saw nothing and would not actually pursue the case legally or illegally. The article goes on further describing other instances of blackmail and double crossing clients.

Double crossing was seen as a common approach used by less scrupulous private investigators. Essentially, the private investigator would take payment from a client, then go to the person they were asked to investigate and ask for payment to cease the investigation. According to the article, another scam used by some private investigators was “bleeding white”—a process where a concerned spouse asks a private investigator to have their partner followed to see if they are faithful. The client has no evidence of infidelity, nor intention of divorce. They are simply curious. The private investigator returns and says they were unable to find anything, but suggests that observations continue. This is done to bleed the

client out of money. Other investigators would use what was called the “third degree”—harsh questioning to get information. It was activities such as these that brought the profession into further disrepute.

As debate over licencing and regulation continued into the 1930s, the rise of private investigators being charged with criminal offences also gained greater notoriety. In some courts, it seems in absence of regulation, the rights of private investigators were being debated. While even today, as then, investigators do not enjoy powers beyond the ordinary person, there may have been some perception, or at least suggested ambiguity that trespass by a private investigator was permissible to obtain evidence. It appears there was some argument made that the need to obtain evidence gave the private investigator some degree of powers. Nonetheless, this argument did not win favour with the judiciary. In 1933, two private investigators were sentence to prison; one for 14 days the other for one month, after entering a house in East Melbourne in an attempt to find evidence for a divorce case (*Western Herald*, 1933, p.2). Further, in 1936, a New South Wales court ruled that a private investigator could not enter a house against the wishes of the owners to get evidence. Such actions would be deemed as trespass (*The Biz*, 1936, p.6).

Despite evidence of impropriety throughout the 1930s, police still resisted any moves to regulate or licence private investigators. According to the NSW Police, any move to licence or regulate the profession would only give private investigations a status and recognised occupation (*Canberra Times*, 1931, p.3). The view of police seems to permeate with legislators in most of the states, but it was in contrast to what the judiciary had been seeking since the late 1880s. The difference of opinion between the police and judiciary provides an interesting insight into where private investigators fitted within the policing and legal professions. It is likely, police disliked private investigators because they considered there was a public misconception investigators had some connection with police work. Yet, the judiciary, who probably spent more time dealing with private investigators through court proceedings, could better appreciate the role of private investigations. Private investigators were common in giving evidence for divorce cases and accepted by the judiciary, but they continued their calls for better regulated, trustworthy, and licenced investigators.

In the post-Second World War period, and up until the 1950s, the courts perceptions of private investigators remained unchanged and there were still calls for the industry to be licenced and regulated. This view was expressed in the

newspapers. In 1948, an editorial published in *The Truth* newspaper highlighted that there were investigators working in Sydney who had significant criminal records. It was concerned with the ease in which people could join the profession and the lack of interest the New South Wales State government had in licensing private investigators (The Truth, 1948, p.4).

It was not until 1953 that NSW begins its licensing process. Prior, in 1951 South Australia had commenced licensing its investigators. Regardless, Victoria was still unwilling to make legislation. It was not until a private investigator was charged with breaking and entering a home that the issue of licencing and regulation was reignited in Victoria. Despite requests by the courts and newspapers to regulate the industry, the Victorian Premier John McDonald argued that investigators were "...like any other citizen and the laws would apply to them equally" (The Argus, 1951, p.10). In 1956, there is a change of view and Victoria begins to introduce its legislation to licence investigators. This change came after seventeen separate investigators were the subject of complaints made to Parliament. It was also reported there was a rise in the number of blackmail attempts made by investigators while undertaking divorce investigations (Argus, 1956, p.6). The new regulations and licencing were fundamentally uniformed across the states. All licencing regulations included the removal the term *private detective* to be replaced with *private inquiry agent*. In addition, licencing in all the states included criminal and character checks. The regulation and licencing of private investigations acknowledged that it was an actual profession. Subsequently, it was a move that could, in the long term, generate greater public confidence.

As illustrated, private inquiry work in the past has been marred in controversy and resented by Police. It seems formidable to suggest that the profession enjoy greater powers. Still, the idea was canvassed in a 1992 NSW Independent Commission Against Corruption Inquiry, where it was recommended that "...consideration be given to allowing licensed agents greater access to information such as criminal histories, information on driver licences and vehicle registrations" (Prenzler & King 2000, p. 5). Aside, it is interesting to note that this recommendation had come from a Chief Justice—a further indication that the judiciary are more comfortable with the work of private investigators than the police.

Access to greater information is helpful for private investigators undertaking cases in fraud and intelligence gathering for debt collection. Throughout the late-

Twentieth Century and into the Twenty-First Century, most investigation work has been related to fraud. Predominately it is insurance fraud that is investigated through factual investigations or surveillance (Cooper, 2005), but, in 1999 the Australian Government also used the services of private investigators to carry out surveillance work on suspect welfare recipients (Prenzler & King 2000, p. 4). By the insurance sector and Government making use of private inquiry services the industry has become even more legitimate.

A further means for the industry to gain greater acceptance is through developing stronger ties to policing. Prenzler and King (2000) provide an anecdote of a private investigations firm working with police on a homicide case. The family of the victim had employed the services of a private investigator who, under police direction, assisted with door knocking and surveillance. The collaboration brought about an arrest of a suspect (Prenzler & King 2000, 4). While the anecdote is a high-end example, it does provide some discussion around future roles for private investigators.

Naturally, within the industry there is consensus that greater access to government information would assist fraud investigations, but there is also acknowledgement that with such power there must be a considerable amount of responsibility and training (Prenzler & King 2000, p. 6). Already licencing is a fundamental requirement and since early-2000 anyone seeking an investigations licence must have completed a Certificate III in Investigative Services. However, the advent of “fast tracked” courses means that some training providers advertise such a course can be completed within five days. Clearly, this suggests that there is still not enough emphasis on training and education. For an investigator to enjoy respectability and greater powers there must be confirmation that the investigator is part of an honourable occupation.

Today, private investigators need to be intelligence-led (Walsh, 2013). They require a formal theoretical knowledge; industry knowledge; and practical knowledge (Whitford, 2013a). None is more important than the other. They must have an understanding of how the world works and how societies and institutions function (Whitford, 2013b). Investigators need to know their industry and the industries they service (Whitford, 2013b). They need a strong knowledge in how to conduct inquiries (Prunckun, 2013). Investigators must also possess analytical skills and an ability to frame and undertake qualitative research (Prunckun, 2015). Finally, they must develop values (Bradley, 2013). Unlike government and law enforcement agencies, private investigators do not always have a clear

protagonists and antagonists. Investigators must be taught to develop their own ability to judge a situation ethically (Whitford, 2013a). These types of skills, knowledge and values cannot be taught at a certificate level. The obvious conclusion is that further training and education is required.

While this history of private investigations in Australia has discussed the nature of the work inquiry agents perform, it is an occupation that has placed them, at times, in a legal ambiguity. The industry was built on archaic divorce laws that aimed to find evidence of fault. As an unregulated and unlicensed occupation, some investigators had a tendency to indulge in criminal practices. For the most part private investigators were viewed with a great deal of mistrust. In many ways, it was only licensing and regulation that allowed the industry a legitimate place, and hence, greater credibility. But the journey for recognition and trust is far from complete. While historically the judiciary appears more accepting of private investigators, it is the police who view them as essentially amateur at best, and a criminal nuisance at worst. Arguably, it is through better training and education that private investigators can shake off the past and move into the future.

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