

WORKPLACE SURVEILLANCE

A BEST PRACTICE GUIDE



Employers may wish to install monitoring devices or CCTV cameras in the workplace for a variety of reasons such as to monitor theft, protect property or ensure compliance with work health and safety laws.

This document addresses the issue of **overt** (in the open) surveillance by monitoring devices as opposed to **covert** (hidden) surveillance.

'Covert' surveillance is regulated in most states and is not permissible without a warrant authorised by a magistrate.

Before taking the step of installing monitoring devices, employers should discuss the issue with employees to see if there is a less intrusive way of resolving the perceived issue.

There are substantive differences in the legislation across the states in the definitions of the various monitoring devices, the extent of the prohibitions on their use and exceptions for their use.

The ACT and NSW have the most stringent requirements and provide specifically for workplace monitoring.

The NSW legislation provides for penalties for non-compliance with the legislative requirements.

Private areas

Most states have some restriction regarding the installation of monitoring devices in 'private areas' and this legislation would apply to the workplace.

'Private' areas clearly include toilets and washrooms, bathrooms, change rooms and lactation rooms but may include other areas which can reasonably be expected to be private.

Best Practice

This document does not attempt to describe the different state based schemes, rather, it provides a Best Practice approach for camera surveillance in the workplace which is based on the NSW model where compliance is compulsory.

- 1 The surveillance camera must be clearly visible in the place where the surveillance is taking place.
- 2 Signs must be installed at the entrance to the place notifying people that they may be under surveillance.
- 3 The surveillance must not take place in 'private' areas – see above.
- 4 The surveillance must not commence without 14 days' prior written notice to the employees.
- 5 The notice must include the following:
 - a The kind of surveillance – eg CCTV camera;
 - b How the surveillance will be carried out;
 - c When the surveillance will start;
 - d Whether the surveillance will be continuous or intermittent;
 - e Whether the surveillance will be for a specified period or ongoing.
- 6 New employees must be given a copy of the notice before they start work.
- 7 The notice can be given by email.
- 8 Any surveillance records must not be used or disclosed except in the following circumstances:
 - a use or disclosure for a legitimate purpose related to the employment of employees of the employer or the legitimate business activities or functions of the employer, or
 - b disclosure to a member or officer of a law enforcement agency for use in connection with the detection, investigation or prosecution of an offence, or
 - c use or disclosure for a purpose that is directly or indirectly related to the taking of civil or criminal proceedings, or
 - d use or disclosure that is reasonably believed to be necessary to avert an imminent threat of serious violence to persons or of substantial damage to property.

NSW

Employers in NSW are required to engage in these steps and there are penalties for non compliance or for disclosure which is not in accordance with the above.

In addition, the employer will not be able to rely on the footage as evidence in any subsequent court proceedings.