

## **Surveillance in the Workplace**

Concerns have been expressed by industrial researchers that persistent, intrusive surveillance of the workforce can lead to a sense of insecurity, loss of trust, inhibition, stress and discontent.

In particular, in call centres where there are high levels of monitoring in the workplace, studies have shown that workers experience more general health problems including depression, tension, anxiety and lower productivity levels. Of concern to employees is that private activity, such as adjusting clothing, practising regular religious observances, flirting and general behaviour, in which people conduct themselves with an assumption of privacy, may be monitored.

Balanced against these concerns, however, is an employer's right to manage the workplace while protecting employees and the company from unlawful activities. In an effort to address these competing interests, the New South Wales Government introduced the Workplace Video Surveillance Act, 1998 which was designed to restrict and regulate the use of video surveillance equipment in the workplace.

There is no specific legislation dealing with workplace surveillance in other states. Protection against the filming of private activity arises under the various acts relating generally to all surveillance, for example, surveillance conducted by the authorities. The State Commissions in Queensland and Western Australia are, however, able to make awards dealing with such matters.

When the NSW Workplace Video Surveillance Act came into effect in February 1999, the then Attorney General and Minister for Industrial Relations, Jeff Shaw, stated:

*"... the secret filming of workers in the workplace will be illegal unless there are reasonable grounds to suspect an employee is committing an unlawful act and a court authority is obtained... This is not 1984 and we do not want a big brother State. We all have rights to privacy."*

The Act establishes the distinction between covert video surveillance and open video surveillance. It is a breach of the Act for an employer to carry out open video surveillance if the following has not occurred:

- At least 14 days notice has been given to employees of surveillance.
- The majority of employees have agreed to the video surveillance.
- Warning signs are placed in the workplace indicating that video cameras are in use.
- Video cameras are visible.

With respect to covert video surveillance:

- Employers must receive authority from a magistrate before they can carry out covert surveillance and it must be solely for the purpose of establishing whether or not an employee is involved in any unlawful activity. A magistrate must be satisfied that there are reasonable grounds to suspect the employee is engaged in unlawful activity.
- A licensed security operator must oversee the surveillance operation and all tapes, other than those required for evidence, must be destroyed after three months.
- Correctional centres, the casino and law enforcement agencies are exempt from the legislation.

The Act specifically prohibits surveillance of an employee in the toilet or shower or for the purpose of monitoring his or her performance.

Whilst some commentators have suggested that the moral costs of surveillance may far outweigh any benefits, in many instances it may be the only way for an employer to determine whether an employee is engaged in unlawful activities.