

# USE OF VIDEO SURVEILLANCE IN RETAIL PREMISES

## – YOUR QUESTIONS ANSWERED.

### ***Why retailers would consider use video surveillance?***

Video surveillance is conducted by retailers to enhance the safety of staff, customers and others visiting retail stores and to protect merchandise and other assets.

### ***Are there any guidelines to the use of video surveillance?***

The Australian Retailers Association recognises that video surveillance is potentially intrusive and has developed a **Code of Practice**, which is available to members, and protects the rights of retailers, their employees, customers, suppliers and all others visiting retail premises.

The ARA recommends that video surveillance should only be used within the retail industry for a lawful purpose, which is related to one of the following

- Monitoring high risk safety areas
- Monitoring pedestrian traffic
- Perimeter security
- Access security
- Overt protection of merchandise and assets
- Covert protection of merchandise and assets

### ***Are there any legal considerations?***

There is specific legislation covering the use of video surveillance in some States (See information box). Where there is no specific legislation, the ARA recommends that retailers follow the Code of Practice.

### ***Do customers and staff have to be notified of the use of video surveillance?***

Where there is no specific legislation, the ARA code recommends retailers should notify staff, customers and all other people entering the premises of their intention to conduct video surveillance.

Signage advising that video surveillance is used should be prominently displayed, in simple language, at entrances to stores ie: *'security cameras in use'* OR *'this premises is under video surveillance'*. Where necessary, consideration should be given to signage in languages other than english.

**The ARA code of practice recommends** that video surveillance should not be conducted in change rooms, fitting rooms, toilet cubicles, or any other area, which can be considered to be of an intimate nature, or where people would reasonably expect to have privacy.

### ***How should staff be notified?***

Notification should form part of the induction process for new employees.

Staff should also be advised that video surveillance **is or may be used in the workplace** and the advice could be made in employment terms and conditions and can be general, ie: *the business may use video surveillance in the workplace'*.

The advice is **not** required to be specific, ie: location and date the video surveillance is being used.

## Are there any extra requirements for the use of covert (hidden) surveillance?

The ARA code of practice recommends that the decision to use covert surveillance include the following considerations –

- that there is reasonable suspicion to believe that an offence or an unlawful activity is about to be committed, is being committed or has been committed.
- That other forms of investigation have been considered and have been assessed to be unsuitable, or other forms of investigation have been tried and have been found to be inconclusive or unsuitable.
- The benefits arising from obtaining relevant information by covert surveillance are considered to outweigh to a substantial degree the intrusion on the privacy of the surveillance subject(s).

### ***Where should I go for more advice?***

Contact the Renata Ringin of Pro Active Strategies Loss Prevention consultancy (the ARA Authorised referral for ARA members) on 1300 13 30 73.

## Specific Legislation

### **New South Wales**

**Overt** (not hidden) video surveillance is not subject to any legal provisions and it is advised that its use follow the guidelines set out in the ARA Video Surveillance Code of Practice.

In New South Wales, video surveillance considered overt if the following apply -

- staff are given at least 14 days notice in writing (or a lesser period if agreed by the staff) of the intended video surveillance,

**AND**

- the cameras used for the video surveillance (or casing) are clearly visible;

**AND**

- there are clearly visible signs at each entrance to any part of a workplace where the surveillance is taking place, informing people that they may be under surveillance.

Video surveillance is also overt if staff have agreed to the use of video surveillance for a purpose other than observing the activities of staff and the surveillance is carried out in accordance with that agreement.

**Covert** (hidden) video surveillance is subject to the provisions of the **Workplace Video Surveillance Act 1998 (WVSA)** which came into operation in New South Wales on the 1<sup>st</sup> February 1999, and regulates covert surveillance of employees in the workplace.

The Act provides strict controls on the use of covert video surveillance, which in turn impacts on the use of cameras in the workplace. The Act regulates covert video surveillance of staff in the workplace. It does not regulate overt video surveillance.

Unless the use of video surveillance falls into the overt category, then it is deemed covert under the Act.

**The use of covert (hidden) video surveillance of staff in the workplace is an offence unless:**

- it is carried out solely to establish whether a staff member is involved in any unlawful activity in the workplace;

**AND**

- the video surveillance is authorised by an order obtained from a Magistrates Court.

It is a defence if the covert surveillance is carried out solely to ensure the security of the workplace or people in that workplace. The employer must give the staff written notice of any intended surveillance, and must be able to show a real and significant threat to the security of the workplace if the surveillance is to be undertaken.

## Victoria

The **Surveillance Devices Act 1999** came into operation in Victoria on the 1<sup>st</sup> January 2000, and regulates the use of listening devices, optical surveillance devices, tracking devices and data surveillance devices. The Act provides strict controls on the use of video surveillance, which in turn impacts on the use of cameras in the workplace.

The Act defines an **optical surveillance device as including any equipment capable of being used to visually record or observe a private activity**. The definition is essentially aimed at video surveillance but is wide enough to include cameras and binoculars.

The Act prohibits the use of surveillance cameras to record or observe **private activity**, except under strict legal control. The use of video surveillance to record or **observe public activity**, either overtly (not hidden) or covertly (hidden), will generally not be prohibited.

The definition of “**private activity**” specifically excludes activity that –

- takes place outside a building
- And
- activity which parties to it ought to reasonably expect may be observed by someone else.

Therefore there is **no prohibition on the use of surveillance in public places** such as shop floor areas and building foyers.

However, the installation and use of cameras in areas such as toilet facilities change rooms and shower areas will be prohibited because people have a reasonable expectation that their activities will not be observed in such places, unless they are specifically advised of the use of cameras in these areas.

Section 7 of the Act regulates the installation, use and maintenance of optical surveillance devices. The section provides that: -

- A person must not knowingly install, use or maintain an optical surveillance device to record visually or observe a private activity to which the person is not a party unless all parties to the activity consent.

## Western Australia

The **Surveillance Devices Act 1998 (WA)** regulates the use of video surveillance in WA and is very similar to the Victorian Legislation in its content and application. The major point of difference is Section 6 of the Act, which regulates the use, and maintenance of optical surveillance devices (video cameras).

The section provides that: -

- (1) A person shall not install, use or maintain an optical surveillance device
    - (a) to record visually or observe a private activity to which the person is **not** a party.
- OR**
- (b) To record visually a private activity to which that person **is** a party (unless all parties to the private activity consent).

## South Australia

There is no legislation in South Australia dealing with the use of video surveillance.

## Tasmania

There is no legislation in Tasmania dealing with the use of video surveillance.

## Northern Territory

There is no legislation in the Northern Territory dealing with the use of video surveillance.

## Australian Capital Territory

There is no legislation in the Australian Capital Territory dealing with the use of video surveillance.