



New South Wales

# Workplace Video Surveillance Regulation 1999

under the

Workplace Video Surveillance Act 1998

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workplace Video Surveillance Act 1998*.

JEFFREY SHAW, Q.C., M.L.C.,

Attorney General.

## Explanatory Note

The objects of this Regulation are:

- (a) to prescribe the form of application for the issue, variation or cancellation of covert surveillance authorities under the *Workplace Video Surveillance Act 1998*, and
- (b) to prescribe the form of a covert surveillance authority issued under the Act, and
- (c) to make provision with respect to the keeping of records with respect to applications for, and the issue of, covert surveillance authorities for the purposes of the annual report required to be made under section 26 of the Act, and
- (d) to require security measures to be taken to ensure that video recordings made as a consequence of covert video surveillance authorised by the Act are protected against loss or unauthorised access or use, and
- (e) to provide for the procedure to be followed in making an application to a judicial member of the Industrial Relations Commission for the issue, variation or cancellation of a covert surveillance authority under section 25 of the Act.

## 1999 No 36

### Workplace Video Surveillance Regulation 1999

#### Explanatory note

---

This Regulation is made under the *Workplace Video Surveillance Act 1998*, including sections 15 (1), 21 (3) and 28 (the general regulation-making power).

This Regulation comprises or relates to matters of a machinery nature.

## Contents

---

	Page
1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
4 Notes	3
5 Application to Magistrate for issue, variation or cancellation of covert surveillance authority	3
6 Application to judicial member of Industrial Relations Commission for issue, variation or cancellation of covert surveillance authority	4
7 Form of covert surveillance authority	4
8 Records relating to covert surveillance authority	4
9 Storage of recordings made in the course of covert video surveillance	4
Schedule 1 Forms	6

## Workplace Video Surveillance Regulation 1999

### 1 Name of Regulation

This Regulation is the *Workplace Video Surveillance Regulation 1999*.

### 2 Commencement

This Regulation commences on 1 February 1999.

### 3 Definitions

(1) In this Regulation:

*the Act* means the *Workplace Video Surveillance Act 1998*.

(2) In this Regulation, a reference to a Form is a reference to a form set out in Schedule 1.

### 4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

### 5 Application to Magistrate for issue, variation or cancellation of covert surveillance authority

(1) An application under section 10 of the Act for the issue of a covert surveillance authority is to be made in Form 1.

(2) An application under section 19 (2) of the Act for the variation of a covert surveillance authority is to be made in Form 2.

(3) An application under section 19 (2) of the Act for the cancellation of a covert surveillance authority is to be made in Form 3.

**6 Application to judicial member of Industrial Relations Commission for issue, variation or cancellation of covert surveillance authority**

- (1) An application under section 25 of the Act for the issue of a covert surveillance authority is to be made in Form 4.
- (2) An application under section 25 of the Act for the variation of a covert surveillance authority is to be made in Form 5.
- (3) An application under section 25 of the Act for the cancellation of a covert surveillance authority is to be made in Form 6.
- (4) An application under section 25 for the issue, variation or cancellation of a covert surveillance authority is to be made by lodging it with the Industrial Registrar referred to in section 207 of the *Industrial Relations Act 1996*.
- (5) The President of the Industrial Relations Commission may make arrangements to determine the judicial member of the Commission who is to deal with the application.

**Note.** Section 25 (4) provides for judicial members to deal with applications under section 25 in the same way as Magistrates deal with applications under Part 3 of the Act. See in particular sections 12 and 19 (3).

**7 Form of covert surveillance authority**

A covert surveillance authority is to be in Form 7.

**8 Records relating to covert surveillance authority**

A Magistrate or judicial member of the Industrial Relations Commission who receives an application for, or issues, a covert surveillance authority is to ensure that the Minister is given written advice of the receipt or issue as soon as practicable after receiving the application or issuing the authority.

**9 Storage of recordings made in the course of covert video surveillance**

- (1) Any nominated licensed security operator who oversees the conduct of covert video surveillance under the authority of a covert surveillance authority is to take such security safeguards

as are reasonable in the circumstances to ensure that any video recordings made as a consequence of the covert video surveillance that are in the possession or under the control of the nominated licensed security operator are protected against loss or unauthorised access or use.

Maximum penalty: 5 penalty units.

- (2) An employer or employer's representative to whom a covert surveillance authority is issued is to ensure that any portion of a video recording made as a consequence of covert video surveillance under the authority that is in the possession or under the control of the employer or employer's representative is protected against loss or unauthorised access or use.

Maximum penalty: 5 penalty units.

## Schedule 4 Forms

(Clause 3 (2))

### Form 1

(Clause 5 (1))

#### **Application under section 10 of the Workplace Video Surveillance Act 1998 for issue of covert surveillance authority**

I, *[insert name of employer or employer's representative applying to Magistrate for issue of covert surveillance authority]* apply under section 10 of the *Workplace Video Surveillance Act 1998* for the issue of a covert surveillance authority authorising the carrying out of covert video surveillance of employees at *[specify address of workplace of employer's employees]*.

1. The following are the grounds for suspecting that a particular employee is or employees are involved in unlawful activity in the workplace:  
*[state the grounds applicant has for suspecting that a particular employee is or employees are involved in unlawful activity in the workplace at the address specified above]*
2. Other managerial or investigative procedures have/have not been undertaken to detect the unlawful activity. The outcome of other managerial or investigative procedures was *[describe what was the outcome of other managerial or investigative procedures]*
3. The following will regularly or ordinarily be in view of the cameras *[describe who and what will regularly and ordinarily be in view of the cameras]*:
4. It is proposed to conduct the covert video surveillance during the following dates and times:  
the period from                      on                      19                      , to  
on                      19  
*[specify dates and time during which it is proposed to conduct covert video surveillance. Note that any covert surveillance authority that is issued cannot specify a period of longer than 30 days during which it is to remain in force]*

- 
5. In accordance with section 10 (3) of the *Workplace Video Surveillance Act 1998*, the following person/persons are nominated as the licensed security operator/operators to oversee the conduct of the covert video surveillance operation:  
*[insert full name and address of each licensed security operator nominated]*
6. Verification of the employer's authority for me to act as an employer's representative for the purposes of the covert video surveillance operation is attached.  
*[If applicant is an employer's representative attach verification. If the applicant is the employer, delete this paragraph. Section 10 (2) (e) of the Workplace Video Surveillance Act 1998 requires an applicant for the issue of a covert video surveillance authority who is an employer's representative to include verification acceptable to the Magistrate to whom the application is made of the employer's authority for the person to act as employer's representative.]*

Dated

*[signature]**[name of applicant]*

**Note.** Under section 10 (4) of the Workplace Video Surveillance Act 1998 the Magistrate to whom an application for issue of a covert surveillance authority is made cannot issue the authority unless the information given by the applicant in or in connection with the application is verified before the Magistrate on oath or affirmation or by affidavit. Under section 10 (6) of the Act, the Magistrate to whom the application is made may require the applicant to provide (either orally or in writing) such further information as the Magistrate requires concerning the grounds on which the authority is being sought.

## Form 2

(Clause 5 (2))

### **Application under section 19 (2) of the Workplace Video Surveillance Act 1998 for variation of covert surveillance authority**

I, *[insert name of the employee, employer or other person affected by the covert surveillance authority applying to a Magistrate for variation of the authority]* apply under section 19 (2) of the *Workplace Video Surveillance*

**1999 No 36**

Workplace Video Surveillance Regulation 1999

Schedule 1 Forms

---

Act 1998 for the variation of the covert surveillance authority issued to *[insert name of employer or employer's representative to whom authority was issued]* on *[insert date on which authority issued]* by *[insert name of person who issued the authority sought to be varied]* authorising the carrying out of covert video surveillance of employees at *[specify address of workplace of employer's employees]* during the period from on 19 , to on

*[insert times and dates specified in the covert surveillance authority as the period during which it is to remain in force].*

The following are the variations sought to the covert surveillance authority described above: *[describe variation/variations sought by applicant]*

The following are the grounds on which variation of the authority is sought: *[state the ground/grounds on which applicant seeks variation]*

Dated

*[signature]*

*[name of applicant]*

**Form 3**

(Clause 5 (3))

**Application under section 19 (2) of the Workplace Video Surveillance Act 1998 for cancellation of covert surveillance authority**

I, *[insert name of the employee, employer or other person affected by the covert surveillance authority applying to a Magistrate for cancellation of the authority]* apply under section 19 (2) of the *Workplace Video Surveillance Act 1998* for cancellation of the covert surveillance authority issued to *[insert name of employer or employer's representative to whom authority was issued]* on *[insert date on which authority issued]* by *[insert name of person who issued the authority sought to be cancelled]* authorising the carrying out of covert video surveillance of employees at *[specify address of*

---

*workplace of employer's employees] during the period from*  
*on 19 , to on*  
*19*

*[insert times and dates specified in the covert surveillance authority as the period during which it is to remain in force]*

The following are the grounds on which cancellation of the authority is sought:

*[state the ground/grounds on which applicant seeks cancellation]*

Dated

*[signature]*

*[name of applicant]*

## Form 4

(Clause 6 (1))

### **Application under section 25 of the Workplace Video Surveillance Act 1998 for issue of covert surveillance authority**

I, *[insert name of employer or employer's representative aggrieved by Magistrate's decision to refuse to issue the covert surveillance authority]* apply under section 25 of the *Workplace Video Surveillance Act 1998* for the issue of a covert surveillance authority authorising the carrying out of covert video surveillance of employees at *[specify address of workplace of employer's employees]*.

1. A Magistrate refused to issue the covert surveillance authority sought on *[insert date of refusal]*
2. The following are the grounds for suspecting that a particular employee is or employees are involved in unlawful activity in the workplace:  
*[state the grounds applicant has for suspecting that a particular employee is or employees are involved in unlawful activity in the workplace at the address specified above]*
3. Other managerial or investigative procedures have/have not been undertaken to detect the unlawful activity. The outcome of other managerial or investigative procedures was *[describe what was the outcome of other managerial or investigative procedures]*

**1999 No 36**

Workplace Video Surveillance Regulation 1999

Schedule 1 Forms

---

4. The following will regularly or ordinarily be in view of the cameras:  
*[describe who and what will regularly and ordinarily be in view of the cameras]*
5. It is proposed to conduct the covert video surveillance during the following dates and times:  
the period from \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, to  
on \_\_\_\_\_ 19\_\_\_\_  
*[specify dates and time during which it is proposed to conduct covert video surveillance. Note that any covert surveillance authority that is issued cannot specify a period of longer than 30 days during which it is to remain in force]*
6. In accordance with section 10 (3) of the *Workplace Video Surveillance Act 1998*, the following person/persons are nominated as the licensed security operator/operators to oversee the conduct of the covert video surveillance operation:  
*[insert full name and address of each licensed security operator nominated]*
7. Verification of the employer's authority for me to act as an employer's representative for the purposes of the covert video surveillance operation is attached.  
*[If applicant is an employer's representative attach verification. If the applicant is the employer, delete this paragraph.]*

Dated

*[signature]*

*[name of applicant]*

**Note.** Section 25 (4) of the *Workplace Video Surveillance Act 1998* applies Part 3 (other than section 24) of the Act to the issue, variation or cancellation of a covert surveillance authority by a judicial member of the Industrial Relations Commission under section 25 of the Act in the same way as it applies to the issue, variation or cancellation by a Magistrate under section 10. Section 10 (2) (e) of the Act requires an applicant for the issue of a covert video surveillance authority who is an employer's representative to include verification acceptable to the Magistrate to whom the application is made of the employer's authority for the person to act as the employer's representative. Under section 10 (5) of the Act, the Magistrate to whom an application for issue of a covert surveillance authority is made cannot issue the authority unless the information given by the applicant in or in connection with the application is verified before the Magistrate on oath or

---

affirmation or by affidavit. Under section 10 (6) of the Act, the Magistrate to whom the application is made may require the applicant to provide (either orally or in writing) such further information as the Magistrate requires concerning the grounds on which the authority is being sought.

## Form 5

(Clause 6 (2))

### **Application under section 25 of the Workplace Video Surveillance Act 1988 for variation of covert surveillance authority**

I, *[insert name of person aggrieved by Magistrate's decision to refuse to vary a covert surveillance authority]* apply under section 25 of the *Workplace Video Surveillance Act 1998* for the variation of the covert surveillance authority issued to *[insert name of employer or employer's representative to whom authority was issued]* on *[insert date on which authority issued]* by *[insert name of Magistrate who issued the authority sought to be varied]* authorising the carrying out of covert video surveillance of employees at *[specify address of workplace of employer's employees]* during the period from \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, to \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_

*[insert times and dates specified in the covert surveillance authority as the period during which it is to remain in force]*

1. A Magistrate refused to vary the covert surveillance authority described above on *[insert date of refusal]*
2. The following variations are sought to the covert surveillance authority :  
*[describe variation/variations sought by applicant]*
3. The following are the grounds on which variation of the authority is sought:  
*[state the ground/grounds on which applicant seeks variation]*

Dated

*[signature]**[name of applicant]*

## Form 6

(Clause 6 (3))

### **Application under section 25 of Workplace Video Surveillance Act 1998** for cancellation of covert surveillance authority

I, *[insert name of person aggrieved by Magistrate's decision to refuse to cancel a covert surveillance authority]* apply under section 25 of the *Workplace Video Surveillance Act 1998* for cancellation of the covert surveillance authority issued to *[insert name of employer or employer's representative to whom authority was issued]* on *[insert date on which authority issued]* by *[insert name of Magistrate who issued the authority sought to be cancelled]* authorising the carrying out of covert video surveillance of employees at *[specify address of workplace of employer's employees]* during the period from \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, to \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_

*[insert times and dates specified in the covert surveillance authority as the period during which it is to remain in force]*

1. A Magistrate refused to cancel the covert surveillance authority described above on *[insert date of refusal]*
2. The following are the grounds on which cancellation of the covert surveillance authority is sought:  
*[state the ground/grounds on which applicant seeks cancellation]*

Dated \_\_\_\_\_

*[signature]*

*[name of applicant]*

## Form 7

(Clause 7)

### **Form of covert surveillance authority**

I, *[name of Magistrate or judicial member of the Industrial Relations Commission issuing covert surveillance authority]* having been satisfied that the application of *[applicant for authority]* shows that reasonable grounds exist to justify the issue of a covert surveillance authority:

- 
1. Authorise the carrying out of covert video surveillance by *[name of employer or employer's representative to whom authority issued]* for the purpose of *[specify purpose for which surveillance is authorised]* subject, in accordance with section 9 (2) of the *Workplace Video Surveillance Act 1998*, to any conditions imposed on the authority by or under the Act.

**Note.** A covert surveillance authority is subject to the following conditions:

- (a) the condition that the licensed security operator or operators specified in the application for the authority oversees the conduct of the covert video surveillance authorised by this authority, and
  - (b) the conditions referred to in section 17 of the *Workplace Video Surveillance Act 1998*, including any conditions specified in the authority under section 17 (1) (e).
2. In accordance with section 17 (1) (e) of the Act, I specify that the conditions to which authority is subject include the following conditions:  
*[omit paragraph 2 if no conditions are to be specified or set out the conditions]*
  3. Specify the period from \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, to \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_ *[specify a period not exceeding 30 days]* as the period for which this authority (unless sooner cancelled) remains in force.

Dated

*[signature]*

*[name of Magistrate or judicial member of the Industrial Relations Commission issuing authority]*