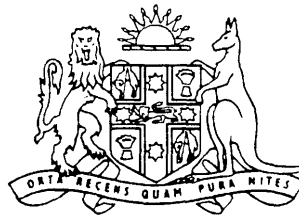


[Act 1998 No 52]



New South Wales

Workplace Video Surveillance Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to regulate covert video surveillance of employees in the workplace by their employers.

The Bill makes it an offence to carry out covert video surveillance of an employee in the workplace unless such surveillance is authorised by an authority issued by a Magistrate. Covert video surveillance of an employee in a toilet facility or shower or other bathing facility or to monitor work performance will not be authorised in any circumstances.

An authority may be issued only if a Magistrate is satisfied that reasonable grounds to suspect that one or more employees are involved in unlawful activities in a workplace exist and justify issue of the authority. The Magistrate must also have had regard to whether the proposed video surveillance would unduly intrude on the privacy of an employee or any

* Amended in committee—see table at end of volume.

other person. Surveillance is to be carried out in accordance with the conditions to which the authority is subject. These include conditions requiring surveillance to be conducted by licensed security operators, limiting access to, and use of, any recordings made and imposing requirements in relation to the destruction of recordings and the reports to be made following surveillance.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 sets out the circumstances in which video surveillance of an employee by an employer will be treated as *covert video surveillance* for the purposes of the proposed Act.

Clause 5 provides that the proposed Act binds the Crown.

Clause 6 makes it clear that notes in the text of the proposed Act do not form part of the Act.

Part 2 Video surveillance offences

Clause 7 (1) makes it an offence for an employer (or a related corporation of the employer) to carry out, or cause to be carried out, covert video surveillance of an employee in the workplace unless the surveillance is solely for the purpose of the employer establishing whether or not the employee is involved in any unlawful activity in the workplace and is authorised by a covert surveillance authority. **Clause 7 (2)** makes it clear that the new offence does not prevent video surveillance by law enforcement agencies and certain other bodies. **Clause 7 (3)** and **(4)** makes it clear that it will not be an offence to carry out surveillance solely for security purposes but limits the evidentiary use to which a recording obtained by such surveillance may be put.

Clause 8 makes it an offence to use a recording obtained by covert video surveillance authorised by a covert surveillance authority for a purpose that is irrelevant to the purpose for which the authority was issued.

Part 3 Covert surveillance authorities

Clause 9 describes things that are authorised to be done by a covert surveillance authority. The authority conferred is subject to any conditions imposed by or under the proposed Act. These include the condition that the conduct of the surveillance be overseen by nominated licensed security operators. The licensed security operators must hold a Class 1 licence issued under the *Security (Protection) Industry Act 1985* (or a licence of a corresponding kind issued under an Act that replaces that Act). A covert surveillance authority will not authorise the carrying out, or causing to be carried out, of covert video surveillance of an employee in any toilet facility or shower or other bathing facility in the workplace or to monitor work performance.

Clause 10 enables an employer or an employer's representative to apply to a Magistrate for the issue of a covert surveillance authority and specifies the information that must be set out in the application. The information includes a statement of the grounds for suspecting that the employee or employees concerned are involved in unlawful activity.

Clause 11 makes it an offence to give false or misleading information in an application for a covert surveillance authority.

Clause 12 enables a Magistrate to decide, subject to Part 3 and the regulations, how to deal with applications. However, it makes it clear that applications must be dealt with in camera.

Clause 13 prevents a Magistrate from issuing a covert surveillance authority unless the Magistrate is satisfied that the application for the authority shows that reasonable grounds exist to justify its issue.

Clause 14 requires a Magistrate to have regard to whether covert video surveillance of the employee or employees concerned or any other person might unduly intrude on their privacy before issuing a covert surveillance authority.

Clause 15 requires a covert surveillance authority to be in a form prescribed by the regulations and sets out the matters that must be specified in the authority.

Clause 16 provides for a covert surveillance authority to remain in force for a period specified in the authority (not exceeding 30 days or such other period as may be prescribed by the regulations).

Clause 17 sets out the conditions to which covert surveillance authorities issued to employers are subject. These include requirements concerning access to recordings, supplying employees affected by surveillance with information concerning the surveillance and erasure and destruction of recordings not required for evidentiary purposes.

Clause 18 makes it an offence to contravene a condition of a covert surveillance authority.

Clause 19 provides for variation or cancellation of a covert surveillance authority.

Clause 20 limits the circumstances in which a further application for an authority can be made if an application for an authority is refused.

Clause 21 requires certain records to be kept regarding the issue, variation and cancellation of covert surveillance authorities and enables regulations to be made in respect of the keeping and inspection of such records and other matters relating to such records. It also requires a Magistrate to take all reasonable steps to preserve the confidentiality of such records and maintain the privacy of the persons concerned.

Clause 22 provides that a covert surveillance authority is not invalidated by any defect other than a defect that affects the substance of the authority in a material particular.

Clause 23 requires the holder of a covert surveillance authority to report to the Magistrate who issued the authority on the results of the surveillance within 30 days after expiry of the authority.

Clause 24 makes it clear that functions under the proposed Act are conferred on individual Magistrates, not on Magistrates constituting Local Courts.

Part 4 Miscellaneous

Clause 25 provides for an application to be made to a judicial member of the Industrial Relations Commission for issue, variation or cancellation of a covert surveillance authority by a person aggrieved by a decision of a Magistrate concerning the issue, variation or cancellation of such an authority. Part 3 applies to and in respect of the issue, variation and cancellation of a covert surveillance authority issued, varied or cancelled by a judicial member in the same way as it applies to such an authority issued, varied or cancelled by a Magistrate.

Clause 26 requires the Minister administering the proposed Act to make an annual report to Parliament in respect of covert surveillance authorities issued during the year.

Clause 27 provides for the liability of directors for offences committed by corporations.

Clause 28 empowers the Governor to make regulations.

Clause 29 provides for the proceedings for offences against the proposed Act or regulations to be dealt with summarily.

Clause 30 provides for a review of the operation of the proposed Act to be conducted by the Minister after 5 years from the date of assent.