



Western Australia Legislation for Video Surveillance Devices

This document is an analysis of the Western Australia Surveillance Devices Act 1998; its purpose is to highlight some widely held misconceptions regarding where video surveillance cameras can be installed and what can be recorded.

Whilst many opinions have been previously published on this subject, the information contained in this document is not intended to offend or belittle those efforts, merely to highlight the confusions that surround CCTV in Western Australia.

The information contained in this document is taken directly from the (Commonwealth) Privacy Act 1988, the Surveillance Devices Act (WA) 1998 and the Security and Related Activities (Control) Act (WA) 1996, nonetheless, it should not be considered legal advice, individual circumstances will vary and professional advice should be sought from suitably qualified and licensed practitioners to verify any legal interpretation that is not fully understood.

The Surveillance and Devices Act 1998 comprises of 44 sections and covers listening, optical and tracking devices, the analysis in this document only covers optical devices and is mostly confined to sections 6 & 27 which are quoted below.

SURVEILLANCE DEVICES ACT 1998 - Section 6

6. *Regulation of use, installation and maintenance of optical surveillance devices*

- (1) *Subject to subsections (2) and (3), a person shall not install, use, or maintain, or cause to be installed, used, or maintained, an optical surveillance device—*
- (a) *to record visually or observe a private activity to which that person is not a party; or*
 - (b) *to record visually a private activity to which that person is a party.*

Penalty:

- (a) *for an individual: \$5 000 or imprisonment for 12 months, or both;*
 - (b) *for a body corporate: \$50 000.*
- (2) *Subsection (1) does not apply to —*
- (a) *the installation, use, or maintenance of an optical surveillance device in accordance with a warrant issued under Part 4;*
 - (b) *the installation, use, or maintenance of an optical surveillance device in accordance with an emergency authorisation issued under Part 4;*
 - (c) *the installation, use, or maintenance of an optical surveillance device in accordance with a law of the Commonwealth;*
 - (d) *the use of an optical surveillance device in accordance with Part 5; or*

- (e) *the use of an optical surveillance device resulting in the unintentional recording or observation of a private activity.*
- (3) *Subsection (1)(b) does not apply to the installation, use, or maintenance of an optical surveillance device by or on behalf of a person who is a party to a private activity if—*
 - (a) *each principal party to the private activity consents expressly or impliedly to that installation, use, or maintenance; or*
 - (b) *a principal party to the private activity consents expressly or impliedly to that installation, use, or maintenance and the installation, use, or maintenance is—*
 - (i) *carried out in the course of that person’s duty as a law enforcement officer;*
 - (ii) *carried out by that person as instructed or authorised by a law enforcement officer in the course of an investigation into a suspected criminal offence; or*
 - (iii) *reasonably necessary for the protection of the lawful interests of that principal party.*

The section refers to a “private activity” as the only thing that cannot be freely observed or recorded. The Act defines a private activity as:

“private activity means any activity carried on in circumstances that may reasonably be taken to indicate that any of the parties to the activity desires it to be observed only by themselves, but does not include an activity carried on in any circumstances in which the parties to the activity ought reasonably to expect that the activity may be observed”

There could be an endless list of examples of what some people consider a private activity to be, the legislation has included a definition that centers on what “*the parties to the activity ought reasonably to expect that the activity may be observed*”. So if you are in a place that has public access without means of screening out observers it would not be reasonable to expect any activity in this place to be private. Change rooms and toilets are places that have public access, but they also have doors or screens especially designed to prevent observation, thus providing an expectation that activities behind these doors and screens would be considered private.

There are exceptions where the viewing or recording of private activities are allowed, these are covered in subsection 2 & 3, unfortunately the ultimate decision maker for these sections would most likely be a Judge or Magistrate aided by the argument of lawyers. This is one of the areas where good independent and qualified advice is strongly recommended if there is a risk that a transgression could arise.

SURVEILLANCE DEVICES ACT 1998 - Sect 27

27. Use of optical surveillance devices in the public interest

- (1) *A person who is a party to a private activity may use an optical surveillance device to record visually the private activity if a principal party to the private activity consents expressly or impliedly to that use and there are reasonable grounds for believing that the use of the optical surveillance device is in the public interest.*
- (2) *A person who is acting on behalf of a party to a private activity may use an optical surveillance device to record visually or observe the private activity if a principal party to the private activity consents expressly or impliedly to that use and there are reasonable grounds for believing that the use of the optical surveillance device is in the public interest.*
- (3) *A person who has under his or her care, supervision or authority a child or a protected person who is a principal party to a private activity may, on behalf of the child or protected person, use an*

optical surveillance device to record visually or observe the private activity if there are reasonable grounds for believing that the use of the listening device —

(a) *will contribute towards the protection of the best interests of the child or protected person; and*

(b) *is in the public interest.*

(4) *In this section —*

protected person *means a person who by reason of mental impairment is unable to consent in accordance with subsection (1) or (2) to the use of an optical surveillance device.*

This section is fairly self-explanatory and deals with further exceptions to viewing or recording a private activity where this is deemed to be in the ‘public interest’. Once again this is an area where what is in the public interest would ultimately be determined by the courts, so it is essential to solicit professional advice before considering surveillance for this reason.

Standards and the Law

Most existing CCTV documentation, including Western Australia Government publications, nearly always have an inclusion or reference to one or more Australian Standards.

It is important to note that Standards Australia, the organisation that produces Australian Standards, is not a government organisation, or part of government - it cannot and does not make "law". Australian Standards are developed by consultation and consensus through a rigorous process. It is the very process of their development, which attracts their application by organisations, including government.

If an Australian Standard is *not* specifically referenced in the act or regulations, it usually means that compliance with the Australian Standard is not mandatory. The term ‘recommended’ is often used to help encourage adherence to better quality and standards but this is discretionary, not compulsory.

Unfortunately some authors of CCTV documentation fail to emphasise this point and as a result consumers are left with a misunderstanding of the true legal requirements surrounding the installation and use of their camera systems.

If these misnomers are not challenged and corrected, then the true position will remain ambiguous.

Typical installations.

The following are examples of some of the most common types of CCTV installations.

1. Domestic residential property.

The installation of cameras and video recorders in domestic homes is becoming very popular along with concerns from owners and neighbors that the system is legal and that the cameras are not being used to ‘spy’ on the surrounding properties. As long as the cameras do not contravene Section 6 of the Act then the following applies;

- a) No permission or permit is required for the installation from anyone, including Police, council or neighbors.
 - b) If you pay someone to install the system the installer must be licensed as required under the **Security and Related Activities (Control) Act 1996**.
 - c) You are not obligated to install any signage to warn that cameras are installed.
2. Office and general workplace. (Excluding premises where Department of Racing Gaming & Liquor authority applies)

A large proportion of business premises now have CCTV systems installed for reasons other than security. Employers are using video surveillance to monitor the performance and behaviour of staff and customers, either with concerns for safety, property theft, property damage, job performance and time on site, or a combination that could include all of the above. Employers often install covert cameras over cash points to detect theft from the till by employees.

As long as the cameras do not contravene Section 6 of the Act then the following applies;

- a) No permission or permit is required for the installation from anyone, including employees, Police, council, visiting tradesmen or customers.
 - b) The system must be installed by a licensed security person as required under the **Security and Related Activities (Control) Act 1996**
 - c) Employers are not obligated to install any signage to warn that cameras are installed.
3. Multi tenanted residential apartment complex.

The same rules apply as in the Domestic residential property category with any additional constraints that may be imposed by the governing, or corporate, body responsible for that particular complex.

These types of buildings usually have a standard arrangement for CCTV surveillance based on common sense and voted for by the corporate committee representing the owners and occupiers of the building.

A typical installation would have cameras placed in most of the common areas to capture persons entering and exiting the premises through the front, rear and fire exit doors but sometimes including the car parks and garages. There is no impediment to installing cameras in other common areas such as swimming pool surroundings and children's play grounds within the complex as long as the corporate committee approves such installations.

In such installations it is wise to seek qualified assistance to develop a voluntary CCTV Policy that may provide some legal protection for any civil matters that may arise; such policies are discussed in other documents, such as **Western Australia CCTV Guidelines**.

Q & A

In Western Australia for the last 30 or so years different rules and regulations have been discussed in many different forums in an endeavor to improve the standards relating to the installation and use of surveillance cameras. While several documents have been produced over this period non have been written into legislation except for the **(WA) Surveillance Devices Act 1998**. Western Australia does not have legislation dealing directly with video surveillance in the workplace like NSW and some other states.

As a consequence of these forums and probably a certain amount of 'folk law' there exists within some sections of the security industry and the general public perceptions relating to surveillance cameras that are not correct, not having a national standard is also part of the problem.

Some widely held beliefs include the following:

1. Is it illegal in WA to use covert CCTV?

No. There is no mention in the **Surveillance Devices Act 1998** as to the type of cameras that can be used in any installation. Equally there is no mention is made about concealed or visible camera systems.

2. *Must owners of CCTV systems demonstrate that reasonable steps were taken to clearly communicate to individuals (including offenders) that CCTV is in use in an area? If an offender can demonstrate a reasonable excuse for why they were not aware that CCTV was in use in the area, could this place the CCTV owner in a difficult position, and potentially at risk of fines? Is signage therefore an important consideration to clearly communicate that CCTV is in use in an area? AS4806.1 – 2006 Closed circuit television –Management and operation states that (as a minimum) CCTV signage be posted at all CCTV system site entries.*

No. There is no mention of signage anywhere in the Act.

3. *Must employees be consulted and agree before CCTV can be installed in an office or workplace?*

No, provided the installation complies with section 6 of the Act. Western Australia does not have specific legislation covering the installation and use of Workplace Surveillance devices. Employers may choose to advise staff as a measure of courtesy and implied trust but they do not need permission from their employees.

4. *Is it a requirement that policy and procedure documentation must be kept for all cameras that are installed in a public area or common areas with public access within private buildings?*

No, under the Act there is no requirement for policy documentation describing details about a surveillance installation.

5. *Is it true that only licensed installers can install and maintain CCTV equipment?*

Yes. Under the provisions of the **Security and Related Activities (Control) Act 1996** any person installing security equipment (including cameras used for security purposes) for remuneration must hold a license issued by the Western Australia Police.

6. Can my IT person can install my CCTV system?

Only if the person is trained in CCTV and is the holder of a Western Australia security installers licence.

7. Is it true that only licenced security operators can view, record and operate surveillance systems that are installed in a public area or common areas with public access within private buildings?

Not necessarily. In most instances there is no requirement for the person who views the CCTV images to be licenced. If a person is employed as a security officer to watch and protect property as described in the **Security and Related Activities (Control) Act 1996** then they must hold a license issued by the Western Australia Police.

8. Is it a requirement that all CCTV systems in Western Australia be installed to Australian Standards?

No, with regard to the installation of CCTV there is no mention of Australian Standards in the Act.

While reference has been made that there is no legislative requirement to adhere to Australian Standards the Security Agents Institute of Western Australia supports and recommends that *all* Australian Standards be observed when installing any security equipment.

The SAIWA also advocates that only suitable qualified and licensed practitioners be employed to consult and install security equipment. This will help maintain integrity, ensure proper standards are adhered to and provide protection for consumers knowing that firstly the persons they have engaged are properly trained and secondly that they have been vetted by the Western Australia Police during their licensing process and do not have a criminal background.

It is envisaged that the legislation pertaining to video surveillance devices will soon be changed in Western Australia and for these changes to have industry and community support the existing status quo needs to be clearly understood so that any inadequacies can be intelligently debated and ultimately corrected.

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