



2011/15470 – PSM/06074

Kathrina Lo
Director, Legislation
Policy and Criminal Law Review
NSW Department of Justice and Attorney General
GPO Box 6
SYDNEY NSW 2001

Dear Ms Lo

I refer to the Attorney General's letter of 30 November 2010 to the Minister for Industrial Relations regarding the review of the *Workplace Surveillance Act 2005* (NSW) ('the Act'). Thank you for the opportunity to participate in this review.

Following the passage of the Act by NSW Parliament, the NSW Department of Premier and Cabinet ('DPC') issued Circular 2005-37 'Workplace Surveillance Act 2005'. This circular outlines the key elements of the Act and their application in NSW public sector agencies.

The Public Sector Workforce Branch of the NSW Department of Premier and Cabinet ('DPC') has sought feedback from NSW public sector agencies ('Agencies') about the operation of the Act. I understand that the NSW Department of Justice and Attorney General ('DJAG') has already received submissions from Unions NSW and NSW Industrial Relations (formerly the Office of Industrial Relations). Therefore, the information below relates to the application of the Act in NSW public sector agencies only.

Agencies were asked to comment specifically on whether the application of the Act in their organisation allows a balance between employees' expectations of privacy and an agency's genuine concern for the protection of the workplace from unlawful activity. Agencies were also encouraged to suggest changes to any aspects of the legislative framework for the Act.

Overall, Agencies report no significant issues or conflicts in relation to the operation of the Act. Further feedback specific to the review of the Act is summarised below.

That the review of the Act give consideration to:

- broadening the definition of 'computer surveillance' (s.3) to ensure that it accounts for computing and other electronic devices, and to ensure that employers cannot avoid the notification requirements prescribed in the Act.

- amending the definition of 'computer surveillance' (s.3) to include reference to collaborative workspaces such as 'wikis', 'blogs' and instant messaging programs, the content of which would also usually be monitored.
- expanding the definition of 'tracking surveillance' (s.3) to ensure that it accounts for all devices that are used for tracking functions, e.g. electronic devices that are Global Positioning System enabled.
- whether existing definitions and notification requirements address the area of tracking employees' activities or locations via social network websites, such as 'Facebook'.
- the adequate protection of the privacy of non-employees who may become subject to surveillance, such as students, visitors, contractors and children, due to their attendance in a workplace.
- providing further guidance to employers around surveillance and monitoring where an employee uses their personal equipment to access employer controlled systems and networks, for example, when working from a location other than the central workplace.

Thank you for the opportunity to participate in this review. DPC would welcome further consultation during the review process. Please contact Angela Philipson by phone at (02) 9228 5423 or by email on Angela.Philipson@dpc.nsw.gov.au if you wish to discuss this matter further.

Yours sincerely



Brendan O'Reilly
Director General