Summary – Workplace Surveillance Act 2005 (NSW)

The Workplace Surveillance Act 2005 (NSW) came into operation on 7th October, 2005.

The Act covers various methods of surveillance of employees including monitoring and recording of emails, computer usage, and access to internet websites.

In summary the Act provides that:

a) Employers must obtain the permission of an Industrial Magistrate or Fair Work Australia before they conduct any ‘covert surveillance’.

b) Employers must give all employees 14 days written notice of the commencement of any type of surveillance. The notice must indicate the kind of surveillance, how it will be done, when it will start, whether it will be continuous or intermittent and whether it will be for a limited period or ongoing. Such notice can be given by email.

c) Surveillance of change rooms and bathrooms is prohibited.

d) Employers cannot prevent email communication or internet website access by an employee unless:
   • It is in accordance with an Email and Internet Usage Policy that has been notified to the employee in advance.
   • An employee is given notice by the employer that delivery of the email has been prevented.

e) There are exceptions to (d) above in cases where the email, attachment or link
   • Is spam.
   • Could damage the employee’s computer or the network (for example, if it contains a virus).
   • Would be considered by a ‘reasonable person’ to be ‘menacing, harassing or offensive’.

f) An Email and Internet Usage Policy cannot prevent delivery of an email or access to a website merely because:
   • The email was sent by or for a union or union official.
   • The website or email contains information relating to industrial matters defined under the Fair Work Act 2009.

What does this mean for schools? The following steps are recommended:

1. Schools should conduct an audit of any workplace surveillance or other practices and policies currently in place to identify matters that may need to be implemented, amended or terminated as a result of the Act.

2. Schools should implement an effective Email and Internet Usage Policy [members schools can access a draft policy on the AIS Employment Relations website – www.aisnsw.edu.au/er.

3. Any current Email and Internet Usage Policy should be reviewed in light of the new requirements.

4. All employees including casuals, temporary, agency workers, independent contractors, and volunteers should be informed of the Email and Internet Usage Policy.

Employers in breach of the legislation may face fines.