



## Procedure: Surveillance

### Purpose

To inform Claims Managers acting for the University of the procedure for the use of surveillance in workers' compensation claims under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) (Cth). This procedure is linked to the University's Rehabilitation and Compensation Policy.

### Definitions

**Claims Manager** is the person responsible for managing and determining workers compensation benefits payable, as delegated by the principal officer of a licensed authority, under the *Safety, Rehabilitation and Compensation Act 1988 (Cth) (SRC Act)*, Section 108H.

**Surveillance** is the observation of a place, person, group, or ongoing activity, in order to gather information, which may include but is not limited to:

- \* **Covert optical surveillance** - secretive, continuous or periodic observation of persons, vehicles, places or objects to obtain information concerning the activities of individuals which is then recorded in material form including notes and photographs;
- \* **Desktop surveillance** - review of any publicly accessible information, and review of social media accounts and other online activity;
- \* **ANU IT systems and security surveillance** – review of usage, and data held, within ANU systems including building access records;
- \* **CCTV footage** – review of any available CCTV footage.

**Workers' compensation** is a system that provides financial benefits and other assistance to employees (and/or their dependants) who sustain an injury at their place of work.

### Procedure

#### Scope

1. This procedure applies to all staff members of the University.

## Overview

2. It is a condition of the University's SRC Act license that the University has in place a Surveillance procedure which satisfies the requirements of the [Privacy Act 1988 \(Cth\)](#) ([Privacy Act](#)) and any guidelines issued by the Office of the Australian Information Commissioner (OAIC), and that the University complies with this procedure.
3. The only form of surveillance to be conducted by or on behalf of the University is surveillance relevant to assessing liability for workers' compensation.

## Requests to conduct surveillance

4. The [Application to conduct surveillance for workers' compensation purposes](#) is completed in all cases where surveillance is proposed, unless this procedure provides otherwise.
5. Claims Managers are not required to make an application for approval to conduct desktop surveillance for workers' compensation purposes. Claims Managers may view publicly available information from any source when considering claims for workers' compensation, and during the ongoing management of a claim. Publicly available information includes publicly available online information on social media and similar public platforms.
6. Surveillance may be required in relation to workers' compensation claims where there are reasonable grounds to suspect misrepresentation of injuries or disabilities, claiming excessive benefits, or fraudulent activity is suspected.
7. Surveillance is an activity which intrudes into the privacy of individuals. Other than desktop surveillance by Claims Managers as set out in paragraph 5 of this procedure, surveillance is not used as a routine procedure. Alternative methods of investigation are preferable and are exhausted before surveillance is authorised. There must be documentary evidence to outline the alternative methods of investigations that were considered before proceeding to surveillance.
8. All surveillance, including surveillance conducted in relation to a claim which is the subject of dispute resolution or legal proceedings, is conducted in accordance with the Privacy Act and any guidelines issued by the Office of the Australian Information Commissioner (OAIC).
9. All requests to conduct surveillance are made by the Claims Manager or delegated authority, to the Chief People Officer (CPO) (Director, Human Resources) or other nominated officer within the University, as notified from time to time.
10. Proper authorisation using the [Application to conduct surveillance for workers' compensation purposes](#) is completed and signed by the appropriate nominated officer.

11. Third party consultants conducting surveillance activities on behalf of the University are sourced and directed by the Claims Manager.

12. Consultants conducting surveillance activities on behalf of the University are issued with written instructions on the University's procedure, guidelines and standards as applicable and detailed in the Claims Management Manual, and are required to agree with these conditions prior to proceeding.

13. All surveillance activities are conducted in a lawful manner that is consistent with Commonwealth legislation and policy.

14. Consultants conducting surveillance on behalf of the University are sourced from fully licensed and insured private investigation firms.

### **Administrative Appeals Tribunal and litigation and dispute resolution issues**

15. The 'Application to conduct surveillance for workers' compensation purposes' form is approved by the CPO or nominated officer before any surveillance (other than desktop surveillance by Claims Managers as set out in paragraph 5 of this procedure) is commenced in relation to matters which are the subject of dispute resolution or legal proceedings.

### **Access, storage and destruction of surveillance material**

16. *The Archives Act 1983* (Cth) is the principal control in respect to the storage and destruction of surveillance material obtained for workers' compensation purposes. The National Archives of Australia Administrative Functions Disposal Authority (AFDA), issued in February 2000, provides, for workers' compensation related material: - "Destroy 75 years after date of birth of employee or seven years after last action whichever is longest.

### **Review of surveillance material**

17. The University periodically reviews surveillance material maintained on files to assess the need for its retention.

18. If surveillance material has not been used in the determination of liability or litigation then the need for its retention is reviewed annually. All affected claims are reviewed on a common date by the Claims Manager.

19. This review documents the reasons why the Claims Manager has decided to either retain or destroy the surveillance material, and such reasons are retained on the Surveillance File.

## Retention of surveillance material

20. In all surveillance matters, regardless of outcomes, a completed approval form, details of what surveillance was conducted and when, and related surveillance material, are retained on a separate official file for each surveillance matter (the Surveillance File). A Surveillance File is stored separately from the workers compensation claim file.

## Surveillance and investigation enquiries

21. Where requests for information on use of surveillance, or other investigation methods, are received the Claims Manager informs the claimant that:

- \* accepted compensation claims are routinely reviewed to determine whether the University remains liable for the claim;
- \* not all such reviews involve formal investigation, and not all investigations, where they occur, involve surveillance; and
- \* it is the University's policy to neither confirm nor deny whether a particular claim is under formal investigation.

## Action

22. All Claims Managers or delegated authority ensure that the processes outlined in this procedure are understood and correctly applied. In addition, claims staff should be familiar with their responsibilities, the sensitivities associated with the use of surveillance and the related privacy implications, as outlined in this procedure.

## Sources

Legal and other requirements
<a href="#"><u>Work Health and Safety Act 2011 (Cth)</u></a>
<a href="#"><u>Privacy Act 1988 (Cth)</u></a>
<a href="#"><u>Safety, Rehabilitation and Compensation Act 1988 (Cth) (SRC Act)</u></a>
<a href="#"><u>Archives Act 1983 (Cth)</u></a>



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