1. Are there explicit legal provisions concerning camera surveillance especially at working places? Are there collective agreements defining the circumstances and conditions for the introduction and use of camera surveillance?

At the national level, the use of surveillance devices by employers is regulated by the *Surveillance Devices Act 2004* (Cth). Surveillance devices include video surveillance (the most common form of which is CCTV), audio surveillance (e.g., using a recorder to tape a conversation) and tracking devices. The Act may not cover all forms of surveillance or emerging technologies such as biometrics, however, and will rarely apply to surveillance in the workplace because of the restricted definition of ‘private activities’ and ‘private conversations’. It also offers no protection to workers who agree to employer use of surveillance devices in circumstances where they may not feel they are free to withhold their consent.

The *Telecommunications (Interception and Access) Act 1979* (Cth) covers an interception of a communication ‘passing over the telecommunications system.’ Accordingly, if an employer wants to use a surveillance or monitoring process that involves an interception ‘passing over the telecommunications system’, it will be covered by the Act and any inconsistent state law will be overridden. However, it remains unclear whether the interception of emails and internet usage constitute information ‘passing over the telecommunications system’ and hence whether the interception of such communications is covered by the Act.

At the state level, the New South Wales Government has enacted the *Workplace Surveillance Act 2005*. According to the Explanatory Note to the Workplace Surveillance Bill, the objects of the Bill are to:

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1 A ‘private activity’ is one carried on in circumstances that may reasonably be taken to indicate that the parties to it desire it to be observed only by themselves, but does not include (a) an activity carried on outside a building; or (b) an activity carried on in circumstances in which parties to it ought reasonably to expect it may be observed by someone else: see *Surveillance Devices Act 1999* (Vic) s 3. A ‘private conversation’ is one carried on in circumstances that may reasonably be taken to indicate that the parties to it desire it to be heard only by themselves but does not include a conversation made in any circumstances in which it might reasonably to expect that it may be overheard by someone else: see *Surveillance Devices Act 1999* (Vic) s 3.
(a) prohibit surveillance by employers of their employees at work, except where the surveillance is notified to employees or surveillance is carried out under the authority of a covert surveillance authority issued by a magistrate for the purpose of establishing whether or not an employee is involved in any unlawful activity at work;

(b) to restrict and regulate the blocking by employers of emails and internet access of employees at work;

(c) to provide for the issue of covert surveillance authorities by magistrates and to regulate the carrying out of surveillance under a covert surveillance authority and the storage of covert surveillance records; and

(d) to restrict the use and disclosure of covert surveillance records.

The NSW Surveillance Act applies to camera surveillance, computer surveillance and tracking surveillance (surveillance of the location or movement of an employee). The Act is intended to replace the existing Workplace Video Surveillance Act 1998 (NSW) which applies only to video (ie camera).

In Victoria, the Surveillance Devices Act 1999 regulates the installation, use and maintenance of listening devices, as well as optical, installation and data surveillance devices used by law enforcement officers. The Act contains workplace privacy provision in part 2A, which sets out in section 9B that surveillance or listening devices may not be installed by employers to “record or monitor the activities or conversations of a worker in a toilet, washroom, change room or lactation room in the workplace.” However, the provision specifically excludes the use of such devices when they are used in accordance with a warrant, a law of the Commonwealth, or are required under the Liquor Control Reform Act 1998.

Aside from the provisions listed above, information-gathering practices such as workplace surveillance, monitoring and testing in Australia are largely unregulated.²

² The Victorian Law Reform Commission report “Workplace Privacy”, 2005, stated that significant legislative gaps exist in relation to the protection of privacy in workplaces, and that such practices require regulation at the state level.
2. Is it obligatory for the employer to define the purpose of the use of camera surveillance? Is this bound to certain purposes (security and safety, the protection of the property of the enterprise, the control of production process, the control of the performance of the worker…) Is it allowed to use camera surveillance for the surveillance of a certain employee or certain employees at the workplace? Is camera surveillance allowed in toilets, dressing rooms or staff rooms?

As noted above, camera surveillance is generally not allowed in toilets, dressing rooms or lactation rooms, but in the Victorian Surveillance Act staff rooms are not mentioned and may hence not be covered. While it is not necessarily obligatory for the employer to define the purpose behind the use of surveillance cameras, it is necessary for them to obtain the employees' consent prior to using such equipment (ss 6-8 of the Victorian Surveillance Act). In addition, provisions exist that specify how records obtained by such devices should be handled. In particular, under ss 9C and 30H of the Victorian Surveillance Act, it is an offence to allow the publication of information gathered by surveillance devices and any information no longer required must be destroyed.

3. To whom are the sequences available.

The sequences recorded by surveillance equipment are generally not available to the general public, but only the employer or law enforcement officer responsible for the recording (s.11 of the Victorian Surveillance Act). However, some important exceptions to this provision exist in relation to this provision, in that the section does not apply:

(a) to a communication or publication made with the express or implied consent of each party to the private conversation or private activity; or
(b) to a communication or publication that is no more than is reasonably necessary-
   (i) in the public interest; or
   (ii) for the protection of the lawful interests of the person making it; or
   (c) to a communication or publication in the course of legal proceedings or disciplinary proceedings; or
   (ca) to a communication or publication of protected information; or
   (d) to a communication or publication made by a law enforcement officer-
      (i) to a person authorised by the chief officer of the law enforcement agency and for the purpose of investigating or prosecuting an offence; or
      (ii) to the occupier of premises of a record or report of a private activity that has been made as a direct or indirect result of the use on those premises of an
optical surveillance device in the circumstances referred to in section 7(2)(c); or
(iii) to the sheriff or to a person employed in the Department of Justice in the administration of the Infringements Act 2006; or
(iv) otherwise in the performance of his or her duty; or
(e) to a communication to a member of Victoria Police by a person authorised to do so by an authorised police officer; or
(f) to a communication or publication authorised by a law of the Commonwealth relating to the security of the Commonwealth.

4. How long are they stored.

There are no rules about this, other than as mentioned above, which is that under ss 9C and 30H of the Victorian Surveillance Act, it is an offence to allow the publication of information gathered by surveillance devices and any information no longer required must be destroyed.

5. Is there an obligation to inform employees if camera surveillance is installed? Does the use of camera surveillance require the consent of the employees?

Consent plays a central role in labour law as well as in aspects of privacy and surveillance law. By ‘consent’ we mean ‘a voluntary agreement, the act or result of coming into accord. It is an act that is unclouded by fraud or duress. Most surveillance legislation stipulates that consent of the employee is required before camera surveillance may be utilised by the employer (eg sections 6-8 of the Victorian Surveillance Act, section 10 of the Surveillance Devices Act 2007 (NSW)). However, in the case of an employer/employee relationship, there may be little scope for free consent, as individual workers lack power to object to practices that invade their privacy, and may feel obliged to provide consent in order to keep their job.3

6. Is there an obligation to inform the works council or trade unions about the introduction and the use of camera surveillance? Is there an obligation to have an agreement with the works council or trade unions defining the circumstances and conditions for the introduction and use of camera surveillance?

At present, there is no such obligation required by statute.

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7. Has the employer (controller, who uses electronic technology to process personal data) the duty to notify the processing to the Data Protection Authority or another authority? Do employers need a permit from the Authority before he can set up the camera? What are the conditions for the Permission for camera surveillance? Has the Data Protection Authority the authority to impose changes in order to make the processing or the surveillance satisfy the requirements of the law?

There are no duties in this regard with respect to employers, under the current legislation.

8. What are the consequences of a failure to comply with the rules on camera surveillance (for instance punishment; liability to pay damages; works council or trade unions or worker can demand the control measures to be stopped and the prior situation to be restored..)?

The legislation in each case provides for the consequences of contravening its provisions – for instance, the Surveillance Devices Act 2007 (NSW) specifies that a maximum term of 5 years imprisonment applies where section 10 is breached.