

TRANSCRIPT

LEGISLATIVE ASSEMBLY ECONOMY AND INFRASTRUCTURE COMMITTEE

Inquiry into Workplace Surveillance

Melbourne – Friday 1 November 2024

MEMBERS

Alison Marchant – Chair

Kim O’Keeffe – Deputy Chair

Roma Britnell

Anthony Cianflone

Wayne Farnham

John Mullahy

Dylan Wight

WITNESSES

Amelia Bitsis, Executive Director, Policy and Advocacy, and

Caitlin Hardy, Principal Adviser, Policy and Advocacy, Victorian Chamber of Commerce and Industry.

The CHAIR: Welcome to the public hearings for the Legislative Assembly Economy and Infrastructure Committee's Inquiry into Workplace Surveillance. All mobile telephones should now be turned to silent.

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Thank you so much today for coming in and speaking with the Committee. We really appreciate your time. We thought we would allow you about 5 minutes to make some opening remarks or statements—you can talk to your submission or something like that—and then we will delve in and maybe ask you a few questions as well.

I am Alison, Chair of the Committee and Member for Bellarine. I will quickly introduce the other members.

Kim O'KEEFFE: Kim O'Keeffe, Member for Shepparton. Lovely to meet you. Lovely to have you here.

Dylan WIGHT: Dylan Wight, Member for Tarneit.

Anthony CIANFLONE: Anthony Cianflone, Member for Pascoe Vale.

Wayne FARNHAM: Wayne Farnham, Member for Narracan.

John MULLAHY: John Mullahy, Member for Glen Waverley.

The CHAIR: Thank you. I will hand over to you.

Amelia BITSIS: I am Amelia Bitsis. I am the Executive Director of Policy and Advocacy at the Victorian Chamber of Commerce and Industry. My colleague is here, Caitlin Hardy, who is the Principal Adviser, Policy and Advocacy, at the Victorian Chamber as well.

The CHAIR: Thank you. I might let you make a few remarks first.

Amelia BITSIS: Sure. Thank you. Thank you for inviting us to present. We are delighted to do so. We have provided a fairly detailed submission to the Inquiry. We thought that this inquiry was really quite important, and we certainly still do. I thought what I would do is very briefly recap on the six key points that are made in our submission. But the secretariat also provided me with a bit of a list of topics that you wanted to cover, so I am actually going to cover them as part of the opening statement to hopefully make this as time effective as we possibly can.

The CHAIR: Yes, great.

Amelia BITSIS: Just in terms of our six key themes, it is our view that there are relevant and comprehensive legislative frameworks in place that govern workplace relationships and that those obviously span anti-discrimination, human rights protections, workplace health, safety, surveillance, privacy, freedom of association and comprehensive protections under the *Fair Work Act 2009*. We feel that amendments or changes to these comprehensive pieces of legislation and regulatory frameworks need to be developed in a measured, technologically agnostic way and based on an identifiable need.

We believe strongly that on this particular topic harmonisation between jurisdictions is absolutely critical, as is interoperability, durability and flexibility of the regulatory settings rather than a siloed and haphazard approach or an approach that means that different jurisdictions are doing different things because understandably businesses are not operating in just one jurisdiction. They may be operating in multiple jurisdictions and that just adds a complexity for them.

We believe that focusing on specific responses to workplace surveillance as it currently exists could entrench legislative frameworks designed around how those technologies exist today, rather than how they might evolve. The pace of technological change is such that we need that legislation to be adaptive and policy settings that will drive innovation. There is another argument in all of this as well, which is that employers need to be able to

access the tools that they require to comply with the suite of legislative and regulatory requirements that have been imposed on them by state and federal government. We think that one way which we have touched on in this submission is that organisation such as ours—the Victorian Chamber—can help businesses around things like best practice, the toolkits et cetera that they require to understand what that legislative framework is, because whilst we might deal with legislation on a daily basis and understand it, that is not the case out there, particularly for small business.

Some of the things that I know that you want me to touch on are around the benefits of digital technology for employers. Just on that, obviously it is changing the nature of work and the location of work et cetera, allowing employees to work from home and remotely in order to balance work—life, care and personal responsibilities and provide access and flexibility to a wide range of workers. It is creating a lot of opportunities for Australians to upskill, as well as opportunities for job creation in emerging technologies, and also supporting productivity in areas, particularly the government funded care economy, where there are obviously some productivity benefits. In terms of some concrete examples, obviously accuracy and precision around payroll, which can be complicated by multijurisdictional legislation, awards and enterprise agreements and regulations; bolstering regulatory compliance; providing an evidentiary base for businesses, regulators, police and the courts; and enhancing physical safety for workers—examples being police, PSOs and retail staff who now are increasingly wearing body-worn cameras. One of the other questions was around—

The CHAIR: Amelia, do you mind if I just interrupt there? Sorry, I am mindful of time. Do you mind if we jump straight into questions?

Amelia BITSIS: Yes, sure.

The CHAIR: I think we will cover some of the things that you are discussing anyway, and then we can get down to some things that the members might like to understand as well. Kim, I might go to you first. Thank you.

Kim O'KEEFFE: Thank you for coming. The chamber of commerce is such an important body. I have had a small business myself, so I do understand your value and the input that you have and the lean-to opportunity that small businesses have to come over to get some advice and support. Thank you for that.

There are probably lots of things that you have touched on that I am really interested in, and I am sure we will get to some of those questions. But something that I noticed in the submission, and something that has come up quite a bit, is that other submissions have said that the privacy and workplace surveillance laws only cover older technologies and specific groups of employers. So where are the gaps there? How do you see that?

Amelia BITSIS: Well, we are not quite sure that there are gaps.

Kim O'KEEFFE: Okay.

Amelia BITSIS: In our view, that is fundamentally what we are saying: we think that those regulations and those legislative frameworks are quite comprehensive, because there is a multiplicity of them. If I was to layer it, you have got a whole heap of stuff happening at the Commonwealth level, there is a whole heap of regulation and legislation at the state level that is governing some of this, and on top of that you have then got the workplace, with the workplace enterprise agreements and so forth and those kinds of industry codes, employer agreements and enterprise agreements that are also—

Kim O'KEEFFE: So you do not think they are older technologies, you think they are quite current and relevant?

Amelia BITSIS: Yes.

Kim O'KEEFFE: That is probably the question.

Amelia BITSIS: Yes.

Kim O'KEEFFE: Are they relevant and current? Are those technologies fit for purpose?

Amelia BITSIS: Yes.

Kim O'KEEFFE: Your application did sort of say that, but we are seeing a bit of the opposite. That is interesting.

Amelia BITSIS: That is our view.

Kim O'KEEFFE: Okay.

Amelia BITSIS: I think some of the other things too, which we also touched on in this submission, are the substantive changes that have been made to particularly closing the loopholes legislation and then consequential amendments to the Fair Work Act. They have not washed through the system yet, and I think we need to give that a bit of an opportunity as well. Some of those changes, and I will just read them out, were around new minimum standards, orders and guidelines for employee-like workers of digital labour platforms, unfair deactivation, jurisdiction and the right to disconnect. They have only just come into effect. So it is important that businesses are obviously allowed to familiarise themselves with what those changes mean to the way they are operating—and employees the same—and give them the opportunity to wash through before imposing a new set of changes.

Kim O'KEEFFE: Okay, and your submission really touched on a lot of that. Thank you. And when I said, 'Where are the gaps?' we are going to hear that from others, probably not from you so much—and we have heard. This is probably the interesting part about having different bodies coming in with different perceptions of what they are offering and what they see out in their space to what others are seeing. And that is why when I say, 'Where are the gaps?' they are probably going to come from the other side. Thank you.

The CHAIR: Thank you. Thanks, Kim. Dylan.

Dylan WIGHT: Thank you. Your submission speaks about harmonisation across jurisdictions and then also talks about Victoria's legislation being adequate. In terms of harmonisation across jurisdictions I do not think what is happening at a federal level right now is going to achieve that. We are not going to have federal legislation that covers the sorts of things that we have heard evidence on, and something like the right to disconnect is much more legislation around work—life balance than it is around surveillance. Particularly given some of your members may work across state borders, would you support Victoria adopting legislation similar to that of the ACT and New South Wales?

Amelia BITSIS: Well, I would say two things. First, the tranches of amendments to the Privacy Act that the Commonwealth is looking at have not been announced yet. So while there have been some amendments made, they have not fully announced as yet what the totality of those amendments might be. We have said very clearly that until you have visibility over that, it would not be such a great idea for Victoria to move without having that knowledge. As far as I am aware, New South Wales is also waiting for those amendments for precisely that reason. That would be our view, that this is an area where we think it is really important that we do have that uniformity. I think there have been areas of these kinds of legislative frameworks where they have worked really well. Arguably, Safe Work Australia occupational health and safety is a great example of where that harmonisation has worked quite effectively, notwithstanding that Victoria is not necessarily following that. Be that as it may, in terms of the other jurisdictions it has been quite a useful model. At least that is how the business community would see it.

Dylan WIGHT: Yes, I understand that, but I think, within the terms of reference, with most of what the feds are doing, there is a fair bit of it that is not going to cover some of the issues that we have heard evidence about, and we have heard evidence about a multitude of issues. There is also a part of the Fair Work Act that essentially provides the legislative framework around surveillance from a workplace sense. If we are talking about harmonisation, wouldn't it be for Victoria to try to be more in line with those Acts that already exist, particularly across really close borders?

Amelia BITSIS: I think that you can still work through a different mode of operation, and that would be going through the SCAG process—the Standing Council of Attorneys-General, I think it is called—and putting it through that framework so you do already start lining up. It is not just New South Wales or the ACT, it is all the rest of the jurisdictions as well. So our view, as we have spelt out really clearly here, is to proceed with caution and hasten slowly, because this is an area of great complexity with implications for the business community.

What I would tell you is that the number one issue for Victorian business out there at the moment is red tape. We see that every single day, and a great example of it is the National Australia Bank CEO coming out in the paper today talking about the exact same issue and the implications for the business community. What it means when the rubber hits the road is that your regulation—good, bad or indifferent—will cause business to need to invest in new types of governance frameworks and so forth to address—

Dylan WIGHT: I would think—and we just heard evidence earlier—it would cost business far more to actually set up the types of surveillance that they are using than to consult with their workers about it. Like, I think—

Amelia BITSIS: I do not agree with the premise that they are not consulting with their workers.

Dylan WIGHT: I mean, that is fine. We do not have to go into that as part of this, but I think to suggest that it is a huge impost on business, particularly from a financial point of view, to consult or to give workers ownership over their own data, as opposed to how much they are spending on the actual surveillance—

Amelia BITSIS: I am not quite sure what that means—ownership over their own data. But be all of that as it may, what I am fundamentally saying is to just be mindful of the cost impost on the business community. It would be important that the Committee is aware of what those costs might be and what those imposts might be and therefore to understand too the opportunity cost, if you like—that on the one hand business will need to invest in this, and that means it will not be able to invest in growth, innovation and other things.

Dylan WIGHT: Sure. Thank you.

Kim O'KEEFFE: Can I just comment on that as well. I did ask this question of our last group of speakers that were here. Being a former small business owner, I did ask about the impact on small business, what support would be given for the legislative change if that does happen and what does that look like for businesses that are already struggling, this impost. These are the recommendations that we are looking at. Exactly what you are saying I am concerned about as well. There can be very small businesses, there can be big organisations that have things already almost in place, but there will be others that this will be a bit of a shock to. They will have some things in place to be compliant, but what does this look like? I am sure that is your concern as well.

Amelia BITSIS: I guess some of the data here is really important. There are 700,000 businesses, as you know, in Victoria; 97 per cent are small, so 97 per cent have got less than 15 employees. We just need to be mindful of all the multiplicity of things that we are asking them to do. I am not saying that we should not, I am just saying that—

Kim O'KEEFFE: How can we make it work for them if it does come in, how do we support them?

Amelia BITSIS: Correct. Rather than the sort of thing that we see, whether it is big, medium or small, which is, 'That's great. We really want to do this, but where do we start? What's the how-to guide? Where does that information exist? Who's developing it? How's it being shared in a way that's going to help business actually understand?'

Kim O'KEEFFE: Thank you.

The CHAIR: Anthony.

Anthony CIANFLONE: Thanks for appearing and for the chamber of commerce's submission. My question, I think, is a very simple one.

Amelia BITSIS: Excellent. Good choice.

Anthony CIANFLONE: I would just like to hear from the chamber of commerce around whether or not or how the business landscape has changed in Victoria since 1999. How has it changed?

Amelia BITSIS: You are saying in the context of workplace surveillance, right?

Anthony CIANFLONE: I am just talking generally about the swathe of changes and evolutions that have happened since then.

Amelia BITSIS: As in what are they, or—

Anthony CIANFLONE: In terms of technology being introduced into the workplace, consumer behaviour, demand, standards, expectations—just generally, how has the environment for business changed since 1999 in Victoria? Would you agree it is significant, that there have been some significant changes?

Amelia BITSIS: Yes. Where are we going with this?

Anthony CIANFLONE: Where we are going is the fact that in Victoria the last major piece of legislation in relation to workplace surveillance was actually the *Surveillance Devices Act 1999*. If we take the chamber of commerce's recommendation and logic which is that:

... the existing legislative and regulatory framework is adequate and can be relied upon to address ... workplace surveillance.

What we would actually be doing as a committee is literally solidifying and reaffirming that the current 1999 workplace surveillances Act of Victoria is sufficient, and that is an Act that really only goes to the use of optical devices and surveillance devices with respect to employees accessing toilet spaces, washroom spaces and lactation spaces. It is a piece of legislation designed when we were talking about Y2K in 1999, which is well and truly history. My point is, if things have changed so much since we last had that major piece of legislation for businesses and the broader community and technology, isn't it only just that the Committee and Parliament look at updating that piece of legislation with respect to workplace surveillance for workers and employees in 2024?

Amelia BITSIS: I think that is a matter for you, fundamentally. What we are saying very clearly is we think there are a multiplicity of legislative frameworks out there. Whether those work within the legislation that you have, that particular Act, that is something you need to look at. We think that it is well covered. That is the nub of our submission.

Anthony CIANFLONE: Okay. Thank you. Noted.

The CHAIR: Wayne.

Wayne FARNHAM: Thank you, Chair. Thank you both for coming here. Your submission talks about technology-neutral laws. What I am getting to here is do you support law reform to create technology-neutral laws for Victoria? Are there examples of technology-neutral surveillance laws that Victoria can learn from that you are aware of?

Amelia BITSIS: I will have to take that on notice. Let me have a look at that, because that is a slightly deeper dive than what we have done.

Wayne FARNHAM: Probably do not have time for that whole thing. No, happy for you to take that on notice.

Amelia BITSIS: I will take that on notice and come back to you.

Wayne FARNHAM: I have got a quick little follow-up before I pass on to my colleague.

Amelia BITSIS: I just need to understand what is happening in New South Wales.

Wayne FARNHAM: Yes, sure.

Amelia BITSIS: There is obviously that particular Act that keeps being raised, and it was raised in your discussion paper I think as well. Let me just take a deeper dive into that.

Wayne FARNHAM: Not a problem. You can take that on notice. My other question—and my background is I was a builder, a small business owner. Workplace surveillance for me was how many frames people put up in a day, so I am not right up with all of this. But I do have concerns with people working from home more and more now; especially post COVID we have a large workforce at home. My concern is how far is too far when

we go to workplace surveillance if you are at home. I have a nephew—I am not going to say the company he works for—who works from home two days a week, and that company monitors keystrokes, mouse movements and all that type of thing. How far is too far? How far is it when companies can have surveillance on employees at home? I think the last thing we want to see is workplaces where we have created a multitude of zombies just sitting in front of a computer. In just your opinion, how far is too far?

Amelia BITSIS: Well, I do not know. The flip side of that is you are being paid to do a job, so there is an expectation of productivity. There needs to be some evidentiary base of that productivity. And when workers are taking that flexibility of being able to work from home, that is obviously based on trust. How does the employer know what the productivity is? Workplace surveillance might be one measure; there may be many others.

Wayne FARNHAM: I mean, I get it—the boss does not want his worker with his feet up watching Netflix. I get that. But I do have concern that it can go too far, so I was just trying to gauge your opinion on how far is too far.

Amelia BITSIS: I guess one of the other things is that we do not want to take it too far the other way, which is that people lose that flexibility because the employer is now railroaded and cannot use workplace surveillance for the purposes of objective measurement and so then requires workers back in the office in order to have objective measurement.

Wayne FARNHAM: Yes. So would it be fair to say if you work 9 to 5 that surveillance just occurs from 9 to 5? You have that break in surveillance from 12 to 1 o'clock for lunch, for morning tea.

Amelia BITSIS: I think that because of a multiplicity of other pieces of legislation, employers need to protect their workplaces, workspaces and their employees as well. Workplace surveillance is offering an evidentiary base for a whole heap of other things like I have talked about in terms of police, courts et cetera. I do not think you can turn it on and turn it off in that way, because you cannot ask business, from an OH&S perspective—sexual harassment, physical harassment, gendered violence in the workplace et cetera—to put all those regulations in but then not give them the tools.

Wayne FARNHAM: Okay.

The CHAIR: Thank you. John.

John MULLAHY: Thanks, Chair. Thank you both for coming in today and for your submission. You mentioned earlier that there were 700,000 businesses in Victoria and 97 per cent them are small, and that gives us 679,000 small businesses here.

Amelia BITSIS: Sorry, 97 per cent of the 700,000 are small businesses, yes, so 6000-whatever are not.

John MULLAHY: 679,000 are small businesses; that is good. The federal Privacy Act exempts small businesses as well as employee records. How can we ensure that these exempt businesses undertaking workplace surveillance protect the privacy of their workers?

Amelia BITSIS: I believe that the federal legislation is exempting them for the moment, but again, what we have not seen is the full tranche of those proposed amendments, right? So we are not sure if small business will be exempted, and in other pieces of legislation that also apply, small business is not exempted. That is why we feel that our advice to you is hasten slowly, so that we actually understand the full legislative environment.

John MULLAHY: So basically you want us to wait and see what comes federally.

Amelia BITSIS: Yes—which does not stop you from having discussions with your federal colleagues and particularly through, as I said to you, that framework of the Standing Committee for Attorneys-General, which you have used previously, obviously, for a range of matters where you have wanted to seek advice from the Commonwealth.

John MULLAHY: Okay. Thanks.

The CHAIR: Thanks. I might jump in and have a question about technologies that are being used currently. We have had some evidence around different platforms or technologies that have been used maybe to monitor keystrokes, for example, but then that technology or that platform allows other types of surveillance that were not really known to the employer at the start. But then they explore different avenues, and then they are able to do other things. It might be using the camera or it might be whether you have left your desk, you know—those types of things as well. So I am wondering whether you could give examples of some technologies, because you talked about experimental technologies and that businesses should have that opportunity to do that. Can you give some examples of some technologies you are seeing in workplaces?

Amelia BITSIS: I mean, mine was more in terms of things like AI, and this is still very new for small business. And remember our submission is very much about the small business community rather than medium and large. The experimental technology that I was referring to was more in terms of AI and the use of that. I think, you know, one great example is a freight and logistics company in Mildura. They are not totally huge but they are substantial, and they now have AI in their warehouse. There are no humans in there at all; it is all AI. That is not a workplace surveillance issue, but that is the sort of experimental technology that we were thinking of.

The CHAIR: Okay. And are you seeing AI being used—

Amelia BITSIS: And there is ChatGPT and, you know, being able to record things—I feel terribly sorry for Hansard about saying this—recording something like this and then asking ChatGPT or whatever, the AI, to literally spit out the notes.

The CHAIR: And are you seeing small businesses, though, use AI more and more now, currently?

Amelia BITSIS: I have got a stat for you if I can find it. In our latest business survey 36 per cent of Victorian businesses said that learning more about AI was one of their top priorities. But in doing so it is very much about how that enhances their operations, how it gives them avenues for growth and how it drives efficiency for them. So it is much more a positive thing around the growth and development, the growth of the company, rather than—no-one has nominated it from a perspective of being able to check on what their employees are doing.

The CHAIR: Okay. And so then with that technology advancing and us experimenting as we go—and I think Wayne has kind of touched on it about going too far, and others have given submissions around there not really being any safeguards around this—we are experimenting on the fly almost. I would maybe just like your thoughts on having safeguards around this type of technology.

Amelia BITSIS: Fundamentally I do not know that there are more safeguards that we need. I am not clear on what the identifiable need is here. Also, you know, I mean in a completely different context we have medical experimentation and innovation all the time. What are the guardrails that we are putting around that?

The CHAIR: There would be lots of guardrails around what we are allowed to do and not do in those situations.

Amelia BITSIS: Well, yes, but I mean not necessarily from a legislative perspective.

The CHAIR: There would be. There are, yes. So that is what I am trying to get to, I suppose: that we do legislate in terms of advancements and ethics, I suppose, around the ethics of using things, so—

Amelia BITSIS: The ethics of it, absolutely—that is very different. Yes.

The CHAIR: That is where I was going to. I am just wondering, though: to have no guardrails is quite an experiment in itself.

Amelia BITSIS: I guess I am going to have to keep repeating the same thing. I am not sure that we do not have those guardrails. I do not know, and at the moment I am not aware that your inquiry has been able to establish what the size of the problem is.

The CHAIR: So I think on the guardrails and whether to legislate, it is around that blurred line now that we are seeing with working from home: what is allowed; are there compromises? I would have thought, and you

can talk to this, small business would actually like that cleared up. As a small business I would like to know what the guardrails are and what I am and am not allowed to do. I am just wondering whether that would make it clearer for small businesses in terms of what they can do and in employing people as well.

Amelia BITSIS: If that is something that you are looking to do, I would say that you would also have to ensure that there is money put aside to ensure that business is equipped with the toolkits, and that needs to be developed by the business community for the business community. So if you want to look at something like that—take respect at work—there is no point having a whole set of toolkits that have been designed for big business but do not flow to small because they are irrelevant to them. That is the sort of thing that you would need to look at. That is quite complex around what best practice looks like in terms of those sorts of governance frameworks. Again, I think from our perspective we are not convinced that there is a problem—that the problem is significant. We are not seeing it; it is not being reported to us. But it is a matter for the Inquiry to obviously establish that fact.

The CHAIR: Thank you. We are nearly out of time. I just want to know if there are any other burning questions, because it is a different perspective than what we have had throughout the Inquiry. Are we all good? Thank you for that. We really appreciate your time today in answering our questions, and your submission. Thank you very much.

Witnesses withdrew.