

TRANSCRIPT

LEGISLATIVE ASSEMBLY ECONOMY AND INFRASTRUCTURE COMMITTEE

Inquiry into workplace surveillance

East Melbourne – Monday 23 September 2024

(via videoconference)

MEMBERS

Alison Marchant – Chair

John Mullahy

Kim O’Keeffe – Deputy Chair

Dylan Wight

Anthony Cianflone

Jess Wilson

Wayne Farnham

WITNESSES

Chris Delaney, Industrial Relations Advisor, and

Peter Johnson, Compliance and Regulatory Affairs Advisor, Australian Security Industry Association Limited.

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.

All evidence given today is being recorded by Hansard and broadcast live on the Parliament's website. While all evidence taken by the Committee is protected by parliamentary privilege, comments repeated outside the hearing, including on social media, may not be protected by this privilege.

Witnesses will be provided with a proof version of the transcript to check. Verified transcripts and other documents provided to the Committee during the hearing will be published on the Committee's website.

Thank you, Peter and Chris, for joining us today. Because we are virtually online today, I thought I might quickly introduce the Committee to you. We have with us Deputy Chair Kim O'Keefe, the Member for Shepparton; Wayne Farnham, Member for Narracan; Anthony Cianflone, Member for Pascoe Vale; and John Mullahy, the Member for Glen Waverley.

Peter and Chris, this will go really quickly because we do not have a lot of time. So what I thought I might do is allow you to have a few minutes maybe just to talk a little about your background or what you are seeing in your industry, and then we will jump straight into some questions.

Peter JOHNSON: I will go first, if you like. Thank you very much, Chair. Thank you very much for the opportunity to present to the Inquiry. As introduced, my name is Peter Johnson, and I represent the Australian Security Industry Association Limited as ASIAL's Compliance and Regulatory Affairs Advisor. I support 2700 member businesses, including 600 member businesses based in Victoria. Personally, I bring 41 years of experience from public policing, private security, the health and retail sectors and associated industries specialising in business support, business operations, risk management, safety, compliance, regulatory affairs and critical infrastructure advisory. I have gained broader industry experience and commercial experience through holding senior management roles in both the public and private sectors. I am a fellow of the Governance Institute of Australia, and I hold a law degree and masters in law. I hold positions on the Victorian security industry advisory committee and the Victorian Firearms Consultative Committee and their ministerial advisory committees. That should do for an introduction. I will leave it open to Chris now.

Chris DELANEY: I will be brief. I have done 50-odd years of industrial relations work, with 30 of those in the security industry. I am ASIAL's workplace relations advisor and provide workplace relations advice, obviously, to all of our members across the nation. I sit on a few committees. I am legally qualified in industrial law. That is probably enough.

The CHAIR: Perfect. Thank you, Chris and Peter. We will jump straight to questions. I might go to my Deputy Chair first. Kim.

Kim O'KEEFE: Good morning, Peter and Chris. Thank you so much for your submission. Your experience and background are so valuable in this hearing. It is really great that we get the opportunity to actually have a little bit of a conversation regarding your submission. Your submission does state that there is uncertainty among security providers about the legal use of devices that have both listening and optical capabilities. How are current laws creating this uncertainty, and how else could surveillance laws be improved?

Peter JOHNSON: Just from a legal point of view, Victoria is naturally different from every jurisdiction. Victorian surveillance legislation really is about a private conversation and private activity, so if you are not in that situation, the legislation is not applicable. Most of our member inquiries relate to their rights and responsibilities and ensuring they are doing the right thing. We deal right across Australia—and you have got variation in legislation. But mainly our members are concerned about if they are doing the right thing and if they have the right to record. It really comes down to what the legislative structure is, because it is all about consent. It is all about transparency. We find that most of our members are not dealing with covert matters; they are dealing with overt matters. This is where we see protection of property, protection of people and workplace safety. This is where surveillance is a big thing in our society. It is a responsibility through the legislative frameworks, where employers have that responsibility to provide that safe workplace and employees have that responsibility as well. Surveillance plays a big part in ensuring that we are able to provide that support.

Yes, it is used for the protection of property a lot, and we see that in our society. We see a lot of surveillance used out in the marketplace, and we see it nightly on media coverage. The thing being that that is the pointy end of surveillance. Otherwise surveillance is generally used to support and protect property and support and provide a safe workplace. I would probably get inquiries nearly on a daily basis from members to ensure that they are actually installing appropriately, recording appropriately and that signs are appropriate and people are advised. As I said, in Victoria really the legislation is only applicable if it is a private conversation or private activity. Otherwise it is very broad. But we really market out there that it is transparency; it is about consent. Chris knows, in relation to employment agreements, that we have a lot of that in there. But generally speaking, that is a very broadbrush overview from that point of view.

Chris DELANEY: Look, if I can just chime in on that one a little bit: from a workplace point of view, for instance, the legislation in New South Wales has been very helpful—it could be updated as well, quite frankly, as it is getting a little bit old—but this opportunity is a very good one for Victoria to sort of drag us kicking and screaming into the 21st century with respect to these things. We find our biggest problem from a protective services point of view is that we work in other people’s environments. We work in other people’s businesses; we do not own the data and we do not often own the cameras or that sort of infrastructure, so from that point of view we do not have a lot of control over what our client does. We do provide advice and assistance to them on that.

If you look at the whole suite of different types of surveillance equipment, a good example is probably an armoured car. We are working at the moment with the New South Wales government, SafeWork, on the Cash in Transit Code of Practice. An armoured car, to keep the employees safe in that armoured car, will have GPS, will have CCTV and will have a mobile phone. It will probably have satellite phones and back-to-base equipment as well—a whole suite of technology to keep the employees safe, know where they are and know that (a) they are not under any threat and (b) that they are doing the right thing. So this is a great opportunity I think for Victoria to provide help to our industry as well in bringing together a lot of information about those technologies and how they should be appropriately used.

The CHAIR: Thanks, Chris. Thanks Peter. Wayne, I will go to you next.

Wayne FARNHAM: Thank you, Peter and Chris, for joining me. I will make it quick, because I know we are struggling for time today. You mention consistency across borders in your submission. So I suppose the question is: should there be a federal approach to these laws and should they be implemented by the states? Is that a better way to go so we do not have cross-border conflicts basically? There is New South Wales and Victoria, and you have got ACT and New South Wales very close together as well. Would a national approach be better for this issue?

Peter JOHNSON: Well, that is a big wish list, and that is something that we have been pushing for years. National legislation is probably not possible, but harmonised legislation is possible, and I think that is where you really need to be. Our federation in Australia and our constitutions really put a barrier there, but yes, you are quite right. We are such a big country, but really industry works in every jurisdiction. Surveillance is in every jurisdiction. So harmonised legislation—from a national point of view, driven nationally, national legislation picked up within each jurisdiction so each jurisdiction still has responsibilities and knows what is happening—would be the ideal way to go.

Wayne FARNHAM: Thank you.

Chris DELANEY: I could not add anything to that. Look, we have wanted harmonised licensing for security officers for years. We know we are not going to get national, but harmonisation of all sorts of legislation is very helpful. And with this I think it is absolutely essential because every part of our working lives, every part of our private lives these days, is covered by some kind of surveillance—we are on it right now—so to have every state and territory working the same way would be an absolute benefit.

Wayne FARNHAM: Thank you.

The CHAIR: Thanks, Chris. John, I reckon we have got time for one more question.

John MULLAHY: Thanks, Peter and Chris, for turning up to the Inquiry today. My question would be: if we do make changes with regard to workplace surveillance laws here in Victoria, what assistance and training would your members and employers need to ensure that they are compliant?

Peter JOHNSON: Really from a legislative point of view, once the legislation comes in employers are responsible to ensure that. Our association would then be part and parcel of the education process in conjunction with regulators around Australia. Remember the security industry is a licensed industry, and therefore it would be a combination of industry and regulators to ensure that information is put out there. And also legislation in Victoria—the Private Security Act is being amended at the moment and renewal training will come in, and therefore we will use renewal training processes for that purpose.

Chris DELANEY: I will not really add to that, other than the fact that we work closely with the Fair Work Ombudsman to ensure that their message gets out to our membership. We have done that for many years and we will continue to do that. Any regulator who wants to work with us to get information to our membership, we will work closely with them.

John MULLAHY: Thank you.

The CHAIR: Thank you so much, Peter and Chris. Can I just quickly add, there was talk at a previous hearing about an oversight body that may regulate or look after this space. Have you seen that work anywhere else, or would you recommend something like that?

Peter JOHNSON: From the point of view of privacy surveillance, there are so many government departments that are associated with it. National privacy legislation does not impact upon everyone—again, if you have a federal government agency, how does it apply to the state? At this stage from a licensing point of view and compliance point of view with the security industry, the security regulators are the appropriate base body to actually ensure compliance with that and the legislative framework can be working around that, and we have regulators from police, consumer affairs and other agencies around Australia. Again, it varies, but the regulator is the one that actually oversees the security industry licensing process.

Chris DELANEY: And from an employee point of view, we have got the Fair Work Act and the Fair Work Ombudsman, who can look after any of the issues where there is any potential breach of that legislation, I think.

The CHAIR: Perfect. Well, thank you.

Chris DELANEY: If the information is used in the wrong way, you know—to the detriment of an employee.

Peter JOHNSON: Hopefully we brought you back on time.

The CHAIR: No, you did. You flew through that with us, so thank you so much for that. You are keeping us on time, but we do again really appreciate your submission and turning up today to answer some of our questions. If there is anything that you think you might think of in the near future, you can add to your submission as well at any point in time. Thank you again for your time today.

Witnesses withdrew.