

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

Joe Calafiore, Chief Executive Officer, and

Amy Salmon, Principal Psychological Health and Safety Specialist, WorkSafe Victoria.

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 both for coming today and answering some of our questions. What we thought we might do is I will quickly introduce the Committee, hand over to you for maybe a 5-minute statement if you would like to talk a little bit and give us a bit of background, and then we will jump into some questions. I am Alison, Member for Bellarine.

Kim O'KEEFFE: Good morning. Thank you for being here. Kim O'Keeffe, Member for Shepparton.

Dylan WIGHT: Dylan Wight, the 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: I might hand over to you. Thank you.

Joe CALAFIORE: Thank you, Chair, and thank you, committee members. My name is Joe Calafiore. I am the Chief Executive Officer of WorkSafe, and joining me today is Amy Salmon, WorkSafe's Principal Psychological Health and Safety Specialist, with over 15 years of experience in psychological health and safety. So we are very fortunate to have Amy's expertise with us here today.

I would like to use a brief opening statement just to provide some background to the Committee about WorkSafe's powers and functions and how they might interact with surveillance in the workplace. WorkSafe, as you well know, is Victoria's workplace health and safety regulator and workplace injury insurer. Our role is to reduce workplace harm and improve outcomes for injured workers. WorkSafe administers Acts and regulations relating to workplace safety and workers compensation. The most relevant of WorkSafe's Acts for this inquiry is the *Occupational Health and Safety Act 2004*. Neither the OH&S Act nor the OH&S regulations refer specifically to workplace surveillance, so there is nothing in the OH&S law which requires employers to use surveillance systems and there is nothing which prevents employers from doing so. However, duties under the OH&S Act are applicable to workplace surveillance. In brief, the objectives of the OH&S Act, as stated in section 2, are focused on preventing harm from occurring. This is made clearest where it states the Act is intended:

... to eliminate, at the source, risks to the health, safety or welfare of employees and other persons at work ...

Put another way, the focus of the OH&S Act is not on responding to incidents after they occur; rather, it requires employers and others to practically identify hazards, assess risks and put controls in place so that, as far as reasonably practicable, harm never eventuates. When WorkSafe often attends workplaces to respond to situations where a person is killed or injured or where there is a near miss, what we are looking for is evidence of whether an employer has done everything reasonably practicable to prevent that kind of harm from occurring in the first place.

Just in the interest of time, very briefly, Chair, the OH&S Act provisions I referred to, compared to workplace surveillance, can operate in a couple of different ways. One situation is where an employer identifies an OH&S hazard and considers that a surveillance system may be a way of eliminating or reducing the risk associated with the hazard. Then the flip side to that example is a situation where surveillance is used inappropriately and introduces a hazard. It could be something like a driver fatigue system. One of Hazelden's trucks has been really successfully used in assisting a company to assess driver fatigue and people falling asleep at the wheel—a really positive thing. The alternative example is where it is used, as I touched on earlier, where workers have

not been consulted. Where it may be invasive, inequitable or non-transparent, it can actually lead to creating the hazard, and I am sure this has well been in the deliberations of the Committee. It can be a control measure. On the flip side, it can actually contribute to a psychological hazard. Perhaps in the interest of time, Chair, if we pull up there, and we are happy to answer any questions.

The CHAIR: Wonderful. Thanks so much, Joe. We really appreciate that. Kim, I will go to you first.

Kim O'KEEFFE: Thank you for coming, and thank you so much for your submission. It is such an important space. It is great to have you here. My question is around—we have had several submissions that have requested more meaningful consultation between employers and employees regarding the use of surveillance technologies in their workplace. What lessons can we learn from work health and safety laws regarding meaningful consultation with their employees?

Joe CALAFIORE: That is a terrific question, because really at the heart of our entire occupational health and safety ecosystem is the duty to consult. Section 35 of the OH&S Act actually requires employers to do so. But I would argue that apart from the legislative requirement, all of the evidence and experts say we have got that productive open and transparent consultation, in particular about something such as surveillance—what is the purpose, how is it going to be used. That is really central to a productive and trusting workplace. I am not sure if, Amy, you would like to add anything there.

Amy SALMON: Yes. I think the research shows that the risk of psychological harm is increased when workplace surveillance is used inappropriately, and that is including where it is not used transparently, where there is not consultation with employees about how it is being gathered and how it is being used or if there is a misalignment between that. Consultation is so key. That is really at the heart of whether it is going to create a risk or not create a risk.

Kim O'KEEFFE: Thank you.

The CHAIR: Dylan.

The CHAIR: Thanks, Amy and Joe, for your submission and for coming to provide evidence today. Obviously there is the OH&S Act, but then there is a lack of specific legislation in Victoria in particular around workplace surveillance. Does that mean that WorkSafe as the inspectorate have limitations on being able to really perform their role when it comes to harm minimisation with workplace surveillance? Are there limitations there on your inspectors going out and investigating an employer that may be using workplace surveillance that is harmful, particularly given that a lot of the time we do not know it is happening?

Joe CALAFIORE: Perhaps if I begin and then hand to you, Amy. From an inspectorate point of view, not really. It is not an impediment, because we have got really clear statutory functions about occupational health and safety. I would say from an operational point of view that does not really present an impediment. And it is quite normal on a day-to-day basis that when an inspector enters a workplace and they have had an OH&S issue there may be a multitude of other compliance issues—whether they are taxation issues or discrimination laws—so we would often work with other regulators, state and federal, in that space. I am not sure from your specific point of view, Amy, whether there is anything else?

Amy SALMON: I would say it does not, and mainly because it actually means it is probably a bit easier to make inquiries about the different types of workplace surveillance that might be in place. In terms of CCTV footage, that is something that often our inspectorate will go and ask for if there has been a work-related violence incident, as an example, and that is really helpful that we can go in and we can ask for that material. And I think if we are thinking about it on the flip side, we do not often see it come through as, you know, workplace surveillance being something that someone has called WorkSafe about and said, 'Come and inspect our workplace because we're concerned about workplace surveillance.' What we tend to hear is that there are employees who are feeling like they are being micromanaged or something along those lines, and so we then look at it from a low job control perspective, which is a psychosocial hazard that we recognise, or an organisational justice issue. It might be that they will say, 'We've been told that we're being monitored in this way, and we didn't know about it,' and so there are no policies and procedures, there has been no information provided about workplace surveillance happening, but it kind of fits in one of the other categories.

Dylan WIGHT: So would you say that that consultation piece in a lot of these workplaces is the issue and probably is not happening as it should?

Amy SALMON: Yes.

Dylan WIGHT: Okay.

The CHAIR: Anthony.

Anthony CIANFLONE: Thanks for appearing, and thanks for all the great work WorkSafe do really every single day across the state—you guys and all the inspectors on the ground. Thank you. It is really important. Look, my question is around this idea or proposal or suggestion from many about an independent oversight body. We have heard some evidence from the Office of the Victorian Information Commissioner, which has put forward some recommendations in that space. We have heard just earlier as well from IR Victoria with some thoughts contributing to that sort of discussion. I would love to hear actually from WorkSafe around where you see your role potentially in the establishment of a new totally independent oversight body or whether such a body potentially could be incorporated within some of those existing entities I have mentioned, including WorkSafe.

Joe CALAFIORE: Thank you for the comments about WorkSafe. Certainly we are not trying to be evasive here. That is really a policy matter for government about setting up separate statutory bodies. The question we probably tend to get asked more is about whether there should be more specific guidance on this topic, which is something we are obviously always open-minded to, because we get asked on a daily basis for guidance on particular topics. At the moment this is something where there are several pieces of different guidance where the topic of workplace surveillance appears, as Amy has alluded to. Sometimes it is in the bullying context, where it may be inappropriate surveillance and monitoring; on the flip side it could be in that CCTV example where it is actually deliberately put in there as a control measure. But yes, that particular question would be a policy matter for government.

The CHAIR: Wayne.

Wayne FARNHAM: Thank you both for coming. My question is around video surveillance. We heard some evidence earlier on in the Inquiry—and I have to use the example, so bear with me—where an employee got injured at work, and obviously WorkSafe do not know the employee is injured until you get the claim form et cetera. So he had a distinct disadvantage because the video surveillance was actually owned by the employer. Unfortunately, his claim got rejected because he did not have access to the video surveillance up-front. Do you think there should be law reform around that so that the employee who has been injured can get access to that video surveillance straightaway and therefore his claim would be accurate when submitted to WorkSafe? What are your thoughts around that?

Joe CALAFIORE: I would have to give some due consideration to it. It is not something that, I must admit, I have come across often in terms of being around these schemes for a while. My instant reaction to that would be that on its own that should not be the basis for rejection on its own. It would be obviously the broad circumstances that would need to be looked at. But I am not sure. Do you have any views, Amy?

Amy SALMON: I think it goes back to—and I obviously have an OH&S lens rather than looking at it from the claims side of things—thinking about the research in this space and whether there is a risk of harm caused to people by not having access to their own data, and the research shows that—

Wayne FARNHAM: Well, I think that is my point, especially in a workplace accident—and unfortunately they do happen. Do you think there should be an automatic right to access that data so that the worker is better protected in that claim situation?

Amy SALMON: I think it is a tough one, because you have also got to think about the protection of the privacy of other people who might be involved in that incident as well. I think it is a difficult one for us to comment on. If we are thinking about the prevention of harm—I mean, what an inspector would do, and that is naturally where I am going to fall to, is to go in and have a look at that incident. If it came through our other line of inquiry—if it came through advisory—they might then send an inspector out there who would look at that footage and then have further information to be able to identify how to prevent future harm for others who

might be in the same situation. But yes, I think it is a tricky one, because I am sure there are other risks associated with that.

Wayne FARNHAM: I suppose the question is: should the data be owned by the company, or should it be shared?

Joe CALAFIORE: If I can jump in here, I would say, as a general principle, the more data transparency you have, the better—I would say as a general principle. On the specific question about the legislative change, yes, I am a bit with Amy. I think it would require policy consideration. We would not have a particular position on it today.

Amy SALMON: Yes.

Wayne FARNHAM: Okay. Thank you.

The CHAIR: John.

John MULLAHY: Thanks, Chair. Thanks, Amy and Joe, for coming in and for your evidence. What are employers' current obligations around providing a psychologically safe workplace? And what assistance does WorkSafe offer employers to help them meet their obligations?

Amy SALMON: That is probably a pretty easy one for me to answer. With the existing obligations relating to psychological risks, employers have the obligation to provide and maintain a working environment that is safe and without risks to health. That includes psychological health, and that quote is directly from the OH&S Act. In the definition, 'health' includes psychological health. So under the Act there are existing obligations to identify and control risks to psychological health.

The second part of the question—sorry?

John MULLAHY: What assistance does WorkSafe offer employers to help them meet their obligations?

Amy SALMON: We have got quite a lot of guidance material on our website, which talks about specific challenges. We have got work-related stress guidance. We have got specific guidance about specific hazards—work-related violence, sexual harassment, fatigue, bullying—and a number of big pieces of guidance material. We have also had WorkWell introduce a toolkit that is available for all businesses, and that gives guidance on how to identify assessment control risks to psychological health.

John MULLAHY: Does it apply to the Legislative Assembly?

Amy SALMON: Am I allowed to not answer that?

Joe CALAFIORE: No comment.

Amy SALMON: No comment.

John MULLAHY: Thank you.

The CHAIR: Are you happy, John? Okay. I would like to ask a question. Joe, you mentioned you provide guidance to employers. You are obviously only able to give guidance under the rules and the guidelines that you have. We have had other submissions talking around how there are no guardrails and there are no legislative requirements. So it is a very grey area at the moment. Can you just talk a little bit about what that guidance might look like and why employers are coming to you? I mean, obviously they are coming to you as they want a safe workplace, but is it going a little bit further now with the surveillance of their workforce part?

Joe CALAFIORE: We get approached obviously in thousands of ways throughout the year by employers, employees, duty holders and directors. As Amy has touched on there, there is a range of educative material that is made available for free on the website, and we have also got ranges of programs that go right to actually sending out, in a sense, specialist advice and support at a business-to-business level.

I suppose, Chair, your question goes to, from a WorkSafe perspective narrowly—no, because our remit is quite legislatively clear. But I suppose this topic touches on a broader policy position, and I think one of the great

challenges with this topic is that it can be a help and a hindrance. This building will have surveillance. We know it is there and we know why it is being used, and it is for legitimate public safety purposes. We had a discussion earlier about keystrokes. We would have core recording of our own advisory centre, but our staff know that when they join; they are aware of it and they know how we will use that. It goes probably to that earlier question about consultation. When it is transparent, when people know the use and when people feel that it is being used fairly, with modern technology there probably can be some real upside, and when it is in reverse, it is a challenge. Now, what that means for what guidance we put out in the future is something we probably still have to think our way through.

The CHAIR: And AI—is that a question that a lot of companies are coming to you about for guidance with as well?

Joe CALAFIORE: They less come to WorkSafe for guidance. I suppose both in the health and safety and the insurance fields that we as employers are exploring these very vexed questions ourselves. We have got at WorkSafe a hundred thousand active clients who are all human beings, and they all respond to injuries differently. There are many experts around the world that say that something such as AI may help in the future with recovery pathways, but similarly we have got to be ultra careful because we hold people's medical records, from a privacy perspective. As you can see, we do not have an easy answer. It is a really challenging area of public policy.

The CHAIR: Yes, thank you. Kim, I might go to you.

Kim O'KEEFFE: I want to just ask about small businesses because we have many, and we tend to think of WorkSafe issues being at big factories or accidents with machinery. That tends to come front and centre. I had a small business myself, and I had workplace compliances I had to meet. The question that has been raised quite a bit in this hearing has been the impact on small business should this legislation change and how we can support those smaller businesses, whether it be the financial disadvantages that they may be impacted by or the types of requirements that are going to make it difficult for small business. Have you got any thoughts or considerations on what the impact might be?

Joe CALAFIORE: I do not have any specific thoughts, because I suppose it would depend on the changes being considered. One of our statutory objectives is actually to minimise the cost burden on business. That is something that is quite prominent in our conversations as part of my KPIs as the chief executive. That is always a lens that we have to take: we are trying to prevent workplace injury. If we cannot prevent, we are trying to assist employers and employees get back to work as practicably and as soon as possible. The overall lens of ensuring that we are not adding to regulatory burden is something from an OH&S and compensation perspective we have hardwired into our legislation. I think it is appropriate for the Committee, obviously, for that to be part of deliberations on any potential changes.

Kim O'KEEFFE: It gets back to that consultation and communication: how you actually get to reach those businesses and how they are supported. That is probably one of my big concerns with the smaller businesses in regard to this change of legislation.

Joe CALAFIORE: Indeed. I think VECCI was on before us. We work really closely with organisations such as VECCI and the Australian Industry Group because they have terrific reach into that employer network.

Kim O'KEEFFE: Thank you.

The CHAIR: Thank you. Dylan.

Dylan WIGHT: Thank you. Oversight and compliance—we have heard different pieces of evidence. Some recommended an independent oversight body; OVIC recommended that it would probably best fit with them. What is your view on that? Does WorkSafe in your opinion have the capacity to have oversight of this if there was to be new legislation or what have you?

Joe CALAFIORE: I am always cautious to enter the terrain of policy positions for government. Instinctively it would appear a bit of a broad stretch, I would have thought, the topic of surveillance. It does not instinctively, I think, neatly fit into our current legislative remit as to whether there (a) should be a separate body, and as to who that would be. I would defer that back to government for their consideration.

Dylan WIGHT: Sure. Okay. Obviously WorkSafe is dealing with most of the compliance I think at the moment through the OH&S Act.

Joe CALAFIORE: Yes.

Dylan WIGHT: If that were to change and there were to be separate legislation, I am just trying to figure out where that would maybe best sit.

Joe CALAFIORE: Yes, and I understand where it is coming from. As Amy said, at the moment there is a clear duty to maintain safe workplaces. Physical safety and mental safety are topics kind of captured as part of our legislative remit as it relates to occupational health and safety. Where there are broader policy considerations is where it probably starts to stray outside of our remit.

Dylan WIGHT: Sure. Thanks.

The CHAIR: Anthony.

Anthony CIANFLONE: Thank you again. You would have heard the witness before from the chamber of commerce being asked the question around how things have changed from a business point of view since 1999. I would love to hear, number one, from a workplace safety, OH&S and psychosocial point of view how things have changed, from a workspace point of view, since then. How has the legislation kept up to date as part of that, whether it is through the OH&S Act of 2004 or the recent workplace safety reforms that we introduced in Parliament earlier this year? But fast forward to today, in terms of psychosocial hazards, how can the Committee further focus on psychosocial hazards as a potential new policy space being elevated and identified in potential future legislation going forward?

Joe CALAFIORE: Maybe if I start, Amy. I think that is great. If we go back 25, 30 years in terms of injured clients, people with mental injury would have represented about 2, 3 per cent. It is a total book—a bit of a cold phrase, I know—of the WorkSafe client cohort, and that is now up to 18 per cent and projected to grow seriously. So the fact that as a community and as a society we are more comfortable now speaking about mental injuries and mental health is a great thing; however, what we have seen on the actual data is a really significant increase in mental injuries in Victoria, and we are seeing that all across Australian jurisdictions. That is one of the big changes, I suppose, we have seen over the last 20, 25 years.

In terms of your professional expertise, Amy, some observations?

Amy SALMON: Yes. I think historically what has been focused on has been the really obvious. Bullying is an example of a psychosocial hazard that has been recognised for quite a long period of time, but what we are seeing in the landscape now is that we are moving more towards recognising and understanding that not everything is bullying and that there are other things at work that create stress and can lead to psychological and physical harm, like high workloads, low job control, poor organisational justice—so no good systems in place or a failure to provide systems that give good transparency and consultation. That is where our guidance has been; we have been building all of that and building our capability internally and trying to do that externally as well, to be able to recognise that there are a whole range of things that happen at work that can be controlled that can create a risk to psychological health.

Anthony CIANFLONE: And workplace technology plays a role in that? Would you agree or would you be of the view that the unregulated space of workplace surveillance is compounding those issues?

Amy SALMON: It is more, I think, because it can be seen as both a positive and a negative. We can see it from a CCTV perspective: that is being really helpful for the deterrence of work-related violence, as an example, so the implementation of that really can be quite a positive. But if you were to use that same data to monitor performance—if you think about it, in a supermarket, right, the CCTV is to monitor and make sure that if there is violence or any aggression, security can get in there quickly and can address that and try to deter that.

Anthony CIANFLONE: Or shoplifting.

Amy SALMON: Shoplifting, exactly. But then if that data was used to performance-manage someone about how many shelves they had stacked, that is when it would create a risk of psychological harm to that person, because it has been used inappropriately and they have not been consulted about the fact that that has been used

in that way. So it can be a positive if it is used in the right way, if it is ethically transparent and done in a way that is in consultation with workers.

Anthony CIANFLONE: Okay. Thank you.

The CHAIR: We might have one more question, I think, Wayne.

Wayne FARNHAM: Thanks. I will just lead on from where Anthony finished on that, because it is an interesting subject in itself. I think what I am learning through this inquiry is that it is really about keeping the employees informed about what is going on. That being the case—I think we said there were 700,000 businesses in Victoria at the moment—do you think there is enough education out there for businesses to really, really understand what they need to do and that they need to consult with their employees? Because I think what we are coming down to is that the common theme is consultation so employees are totally aware of what is going on. Do you think there is enough education in that space at the moment?

Amy SALMON: Look, I think we have got a lot of guidance on our website about that. We have a part of the Act that points to the requirement to consult. In relation to workplace surveillance, we have got some of our guidance material that refers to it. How much do we need?

Wayne FARNHAM: Okay. With all due respect, having been self-employed for a lot of years, I probably went on the WorkSafe website twice in 30 years. So for those of us fossils that do not go on websites, what is a better way to educate employers?

Amy SALMON: There are other ways that we do educate. I have just come from a webinar this morning on preventing and managing work-related psychosocial hazards, so we do a number of those sorts of things as well. We try and get out there and do roadshows. We do visits as well. Inspectors do visits from a proactive perspective to go and provide education relating to obligations in the psychological health space. So it is not just the guidance on there. Sometimes the education comes after we are called out to go on a visit to respond to something, but there are absolutely other avenues. The website is the central source of information and that is why we refer to it mostly. We have hard copies for when we are heading out to a farm to give to a farmer a bit of information about how to control risks to psychological health. We are not expecting them to get on their computer. We take that stuff with us.

Wayne FARNHAM: Thank you.

The CHAIR: Thank you. I am just mindful of time. Thank you very much for answering our questions today and adding to the conversation and for us to consider WorkSafe perspectives. We really appreciate that.

Witnesses withdrew.