

TRANSCRIPT

LEGISLATIVE ASSEMBLY ECONOMY AND INFRASTRUCTURE COMMITTEE

Inquiry into workplace surveillance

East Melbourne – Thursday 26 September 2024

(via videoconference)

MEMBERS

Alison Marchant – Chair

John Mullahy

Kim O’Keeffe – Deputy Chair

Dylan Wight

Anthony Cianflone

Jess Wilson

Wayne Farnham

WITNESS

Daniel Hodges, Executive Manager, Workplace Relations, Victorian Automotive Chamber of Commerce.

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 of this 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. I will just remind members and witnesses to mute their microphones when not speaking, just to minimise that interference.

Thank you so much, Daniel, for joining us today. We have got a short amount of time, so I am going to go as quickly as I can. I might give you about 3 minutes or so with opening remarks, and then we will jump straight into some questions. Thank you. Over to you.

Daniel HODGES: Thank you, Chair, and good afternoon, everyone. As stated, my name is Daniel Hodges, and I am the Executive Manager, Workplace Relations, at the Victorian Automotive Chamber of Commerce. VACC is Victoria's peak automotive association, representing approximately 5000 automotive businesses, spanning 20 industry subsectors and employing over 50,000 Victorians. Consistent with the broader industry, 97 per cent of our membership are small businesses. We thank the Committee for the opportunity to appear today.

As noted in our written submissions, while the automotive industry may not necessarily be at the forefront of adoption, all industries are likely to be impacted by the recommendations made by the Committee, including those businesses seeking to utilise these technologies in future. Accordingly, VACC believes it is best able to contribute to the Inquiry by highlighting the need for a balanced approach that acknowledges the broader statutory context and avoids the imposition of unnecessary barriers to adoption.

At a foundational level our submissions seek to highlight that technological advancement in the workplace is not a zero-sum game where improvements that are beneficial for employers are correspondingly detrimental for employees. Rather, in VACC's view, they are best understood as mutually beneficial and reinforcing. Similarly, VACC believes that any fair-minded consideration of the regulatory complexity of today's workplace underscores both the necessity and continuing relevance of managerial prerogative in determining the use of technology in their businesses.

Our written submissions provide examples of these technologies in achieving compliance with work-related laws and delivering productivity benefits. In relation to the former, we noted the important role of technologies such as CCTV and geotracking devices in establishing and maintaining a safe working environment—a point also recognised in WorkSafe Victoria guidance. However, perhaps the best example of the importance of workplace surveillance for OH&S purposes is provided by the successful campaign by Victorian trade unions to achieve legislative change to the OH&S Act in 2021. This resulted in ARREO permit-holders and health and safety representatives being provided with a statutory right to make audio and video recordings in the workplace. VACC notes that this is particularly hard to reconcile with their submissions to this inquiry, which seek to prohibit or severely restrict employers from doing the same.

Our submissions then addressed jurisdictional considerations and the inherent complexity of privacy in the workplace, particularly in distinguishing that which is personal and private from that which is work related. In regard to the latter point, we highlighted the seemingly ever-expanding concept of work relatedness, and with it circumstances in which an employer can be held liable for the actions of their employees.

Finally, our submissions seek to draw the Committee's attention to the impact of red tape on small businesses, underscoring the need for an approach that avoids unnecessary complexity and duplication to provide all workplaces access to the benefits that technology offers. Thank you. Those are our introductory remarks.

The CHAIR: Thank you so much for that. We will jump straight into some questions. John, I might go to you first.

John MULLAHY: Thanks, Chair. And thanks, Daniel, for being here today at our committee meeting. The Victorian Automotive Chamber of Commerce obviously represents a large body of members—5000 automotive businesses across Victoria—and that would be an extensive number of workplaces as well. How common is workplace surveillance in your members' workplaces, and what types of surveillance technologies do they use? Secondly, what benefits do your members gain from workplace surveillance?

Daniel HODGES: Sure. It is increasingly something that is used, and primarily it is used by members principally for the security of their people and their property, including theft, ensuring compliance with work-related rights and obligations. So CCTV cameras, geotracking devices and vehicles for employees who spend time on the road away from the workplace or alone at night, so tow truck drivers, roadside assistance, those sorts of examples. We have seen particularly in the service station environment they have been really important in protecting and providing employees with a sense of security. Where there are claims made, for example, by customers of theft or inappropriate behaviour, having the benefit of having that footage available to be able to determine what actually occurred has been very helpful both for the employers in determining what actually occurred and also for the employees themselves.

John MULLAHY: I assume there would be a benefit there of—you are talking about petrol stations there, where you would have maybe just one employee looking after a petrol station—having that security of knowing what is going on when they are there by themselves.

Daniel HODGES: Yes, absolutely. We had a recent example where, interestingly, we had a certain involvement. One of our members had an issue—one of their employees was concerned not that the CCTV cameras were operating but that they were not operating. They felt vulnerable as a result. So there was an involvement with one of the unions to help that employee understand that in fact the CCTV cameras had been upgraded and they were actually more beneficial, in as much as there were more cameras, and therefore they felt more secure and protected as a result. Once the union were able to explain to the employee that they were aware that the cameras were fully operational, that actually resolved the issue.

The CHAIR: Thank you, John. Wayne, I will go to you next.

Wayne FARNHAM: Thank you, Chair. Thank you, Daniel, for attending today. I will make my question pretty short because I know we are short of time. How might automotive businesses be affected if there were stricter regulation of workplace surveillance in Victoria?

Daniel HODGES: Our membership is from sole traders all the way to multinationals. But the vast majority of our membership is small business, so the more regulation, the more red tape, the more difficult it is for them to comply. They simply do not have the same time or resources—either as far as financial or in terms of in-house HR, OH&S, legal counsel as what larger businesses have. They are not simply little big businesses. I think it is important to note that in this space there are already a lot of regulations.

In regard to where it is used for OH&S purposes, there is a duty to consult under the OH&S Act and there is an issue resolution procedure in the event that employees feel that there is a problem with that consultation process. Similarly, under the Fair Work Act, for modern awards and enterprise agreements, there is a duty to consult when an employer has made a definite decision to introduce major workplace—change, including technological change—if it is going to have a significant effect on the employees.

Again, it is quite prescriptive, and having another layer on top is concerning. Our view is that it would be best to ensure that employers understood what their existing obligations were in regard to notification and consultation. Having said that, under the OH&S Act and the Fair Work Act they are not overly prescriptive, which we think is important, and the fact is, they have got issue resolution procedures. If someone is not happy with the process, there is an ability to attempt to resolve it in the first instance at the workplace level and then an escalation point so that if it cannot be resolved at the workplace level, there is the opportunity for other parties to get involved. In the case of the Fair Work Act, that is the Fair Work Commission, and in the case of the OH&S Act that is WorkSafe themselves.

Wayne FARNHAM: Thank you.

The CHAIR: Thanks. Dylan, I reckon we can squeeze one more in.

Dylan WIGHT: Great. Thanks, Chair. I will be quick. Your submission speaks about moving from a consent model to a notification model, and you speak in there about the fact that the consent is not always freely given at the moment. Now, just about every modern award in Australia, certainly in Victoria, requires an employer to consult with a worker around significant workplace change. Why would this be any different? Why shouldn't an employer have to consult with workers when introducing new pieces of surveillance?

Daniel HODGES: Thank you for the question. I think, as I said just previously, there is already a requirement to consult, so the process is already there. So the issue is introducing another layer to consult that might be slightly different to the consultation requirements that are already in existence. The more layers, the more complexity, the less likely I think an employer is able to have an awareness of every single obligation, and that is one of the big issues. As far as the consent model, I think that was raised in the context that there have been arguments made that in the employment context, the question is whether or not consent can be freely given in the context of an employer–employee relationship. So our submissions went to if that were to be the case and they were to move away from that consent model, because of that, rather than having implied consent. Then moving to the consultation requirement—which again is something that is already in place—and making sure that this is consistent and effectively just reflects what is already in place rather than adding a different set of, you know, moving the goal posts further, we think would be the most logical way of doing it. It avoids duplication and makes it easier for everyone to comply. Our concern is if it gets too hard, if employers feel like they are being set up to fail, then compliance becomes an issue.

Dylan WIGHT: In terms of what already exists in terms of consultation obligations through a modern award, in your experience are your members aware of that? Are they doing that when they are introducing new pieces of surveillance?

Daniel HODGES: Well, the point I guess is that it's already there—The duty to consult under the Fair Work Act is different to under the OH&S Act. Under the Fair Work Act that is only when a definite decision is being made to introduce a major workplace change and that major workplace change must have a significant effect on or is likely to have a significant effect on employees. So in those circumstances then typically, yes, they will consult, but they have got the benefit of being a member of an employer organisation who gives them this information. There are plenty of businesses out there who perhaps do not have that level of knowledge, and I think that is an important thing to make sure because, again, the vast majority of businesses who would be impacted by this are small businesses.

Dylan WIGHT: All right. Thank you.

The CHAIR: Thank you so much, Daniel. I really appreciate your time and answering some questions today and your submission. If there is something that has been sparked out of today's conversation and you want to add further information to the Committee, we welcome that as well, but thank you again for your time.

Daniel HODGES: Thank you very much.

Witness withdrew.