

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

Emma Germano, President (*via videoconference*), and

Charles Everist, General Manager, Policy and Advocacy (*via videoconference*), Victorian Farmers Federation;
and

David Brear, General Secretary, Victoria Tasmania Branch, and

Liam Hanlon, Industrial Officer, Victoria Tasmania Branch, Independent Education Union of Australia.

The CHAIR: Welcome to this panel hearing 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.

Thank you for attending today. We will run this session straight into a question-and-answer format, and the Committee members will ask some questions. If you wish to answer those, if you could just raise your hand or unmute yourself if you are online and then we can go straight into your answer. If there is something though today or any points that we do not have an opportunity to talk about during the session, we do accept further submissions or other written information from you as well.

I will introduce the Committee very quickly, then if you want to introduce yourselves and then we will jump straight into it. I am Alison, the Member for Bellarine.

Kim O'KEEFFE: Thank you for coming. Kim O'Keeffe, Member for Shepparton.

Dylan WIGHT: Dylan Wight, Member for Tarneit.

Anthony CIANFLONE: Anthony Cianflone, Member for Pascoe Vale.

Wayne FARNHAM: Wayne Farnham, Member for Narracan.

John MULLAHY: And John Mullahy, Member for Glen Waverley.

The CHAIR: I will start with you who are in person, and I will let you introduce yourselves.

David BREAR: My name is David Brear. I am the General Secretary of the Independent Education Union Victoria—Tasmania Branch.

Liam HANLON: I am Liam Hanlon. I am an Industrial Officer at the IEU Victoria—Tasmania Branch.

The CHAIR: Thank you. And online?

Emma GERMANO: I am Emma Germano, the President of the Victorian Farmers Federation.

Charles EVERIST: Charles Everist, General Manager of Policy and Advocacy at the VFF.

The CHAIR: Thank you. Thank you all for that. I am going to go straight to Kim as Deputy Chair to ask the first question.

Kim O'KEEFFE: Sure. Thank you so much for your submission, and as I said, thanks for coming along today, and to those on Zoom. It is a big question: what changes could be made to Victorian surveillance laws to address your concerns about unauthorised workplace surveillance?

Liam HANLON: I can start with that one. First of all with the unauthorised surveillance, as we have outlined in our submission, one of the big concerns that we find from our members is that with the proliferation of new and exciting technology that the students in schools get their hands on, it comes with some downsides to it as well. We have had a number of members report to us that they have been subject to covert recordings of them maybe during the classroom, maybe out in the yard and things like that. Unfortunately, quite a few members have found themselves on social media, be that TikTok, Facebook, Instagram, when they have not asked to be there and definitely have not consented to being there. I guess from our perspective what we are sort of hoping could be achieved is some form of regulation that goes to looking at: are there ways that an employer can take a bit more of an active role in minimising those sorts of incidences occurring?

David BREAR: Obviously, the proliferation of the devices Liam has talked about—every student has an iPhone, every student has got an iPad or a laptop computer with a camera in it. A lot of students have got smartwatches, so we have had instances of students ringing their parent during class and then a teacher being transmitted through the smartwatch into a conversation with a parent and not knowing that that was going on. I mean, there are a couple of different things at play. One is the issue of surveillance that people kind of know about, like the employer, as in CCTV, and we have got some comments to make about that, but probably our bigger concern at the moment is students using smart devices to record and/or transmit interactions with other students—and that can very often be a student safety issue—or with staff. We get instances, for example, of students deliberately provoking a teacher; someone will be filming it and then someone will deliberately provoke someone and then get a particular response that will then be uploaded onto TikTok or something like that. We have had instances of students filming or taking photographs of their teachers or education support staff and then digitally altering them, including deepfake porn of both school staff and also other students.

Then when you come to the whole question of the Surveillance Devices Act, because these are not private conversations there is no protection for our members, because to characterise what happens in a classroom as a private conversation is difficult to do because essentially it is a public forum. And then even if it was covered, how do you prosecute a student under the Surveillance Devices Act? What is the remedy? So what we think needs to happen is some sort of requirement on the employer from an occupational health and safety point of view, or even as a school registration point of view, some mandated policy that schools ought to have in place to deal with this as a psychosocial issue—both a psychosocial safety issue for the staff and a child safety issue as well. So for example, our understanding is that the education minister could, through the VRQA, the school registration body, mandate that schools have to have a policy dealing with the use of these types of devices in schools, because what can happen is that we might have a member who gets filmed doing a particular thing and that is then used against that person in a disciplinary hearing or, as I mentioned before, posted on the internet.

Liam HANLON: I think the other point that David has touched on is that what we hear from our members is not so much that they, you know, want a prosecution out of being covertly filmed, but they feel quite often that they are let down by the employer in what the response is from the employer to it. So they feel violated in terms of they have been taking their class or whatever and then they have been filmed, they have been put up on social media without their consent and then they sort of feel they are left out of the process with the employer and that the employer does not necessarily respond to it in a way that they sort of feel brings them a bit of restorative justice.

The CHAIR: I might go to online as well because I know in your submission you talked about covert and unsolicited—sorry—so we will go to maybe Emma. Thank you.

Emma GERMANO: Thanks very much. Primarily our concern is where we have animal activists who are illegally trespassing onto farms and putting surveillance devices on properties, and often they might put those surveillance devices onto properties for a really long period of time, which they then edit into a package to essentially put into the media somehow—whether they disseminate that information themselves or often it ends up in mainstream media—that will create a false depiction of on-farm practices. Essentially the activities that they seek to record are private activities that are within private businesses and on private premises, and essentially that would all constitute a breach to the Act other than the fact that we then have this issue of the public interest. So in many cases, due to the notion of public interest this information is allowed to be disseminated, and that can create a very false picture of an individual business. It can have ramifications on individuals. We are talking about psychosocial safety and the psychosocial safety impacts on farmers of the fear of these devices being installed in their properties.

So essentially we are making a recommendation that the public interest test should be balanced with the fact that this footage essentially is being gathered by an illegal means, and therefore it should kind of trump the public interest test, when often it creates a false depiction of farms in any case. There are lots of ramifications for that, but at the moment we are seeing an issue firstly with the trespass laws, which are not really being upheld in the fashion that they should be. Secondly, it can be difficult to identify who has actually installed the cameras, because they are often not part of the footage themselves. So that public interest test or that exemption needs to also be removed from the third party that ends up disseminating that information. Charles might have something to add to that.

The CHAIR: Thank you, Emma.

Charles EVERIST: Nothing further from me.

The CHAIR: Okay. Thank you. That is perfect. I am happy with that. Dylan, I will go to you then for another question.

Dylan WIGHT: Can I follow up on that really quickly?

The CHAIR: Yes.

Dylan WIGHT: You spoke then around the fact that current legislation in the surveillance Act actually makes what animal activists are doing in particular businesses, which we have seen in the media, actually illegal at the moment. There are some barriers around being able to identify the people that do it. Obviously I think most of the time they probably know they are being filmed as they are doing it, so they are in dark clothing or hoodies or whatever that may be. Essentially, what you are talking about is reforming the current Act just to narrow the definition of public interest. Can you just elaborate on that a little bit more?

Emma GERMANO: Yes. Absolutely. It is a breach of the Act to undertake those activities under section 7(1), but then subsequently because of that public interest—I mean, public interest can be such a wide, capture-all kind of exemption, where you could easily say that anybody who is eating a meat product wants to know how that product is farmed, so therefore it is in the public interest. It does not necessarily create a full picture. So we are saying that what is being given to the public is not necessarily a true picture of what is happening on farms anyway. It is actually being used in many cases to film activities that are actually lawful and then being often really heavily edited to create—you know, it ends up on a backdrop of some really heartstring-pulling music. It is clipped together in a way that creates really not a true picture of actually what happens on farms, and that public interest test at the very least is creating a deterrent for prosecutors to go after it, in any case.

We already acknowledge in the Act that the behaviour itself is incorrect, but this exemption is meaning that the behaviour that we have identified in the Act as unlawful is actually being wiped away by the public interest test. We are saying the public interest test should be narrowed. We are certainly not saying that this should encroach on whistleblower activity. A person who is working within a business who identifies unlawful behaviour is actually privy to that private information, so it is not being illegally obtained in that case. We would not seek to dull down the ability of a whistleblower to bring unlawful evidence to the public, and therefore the public interest test would still enable that information to be disseminated. But given that, to your point, everybody is in a dark hoodie and they have got a balaclava on and you cannot see—in some cases the animal activist will use it as a glory moment and they will put their face on camera, but if it is being obtained by people who are doing it under the cloak of darkness, then we have to be able to hold someone responsible, and therefore that public interest test needs to apply also to the third party that disseminates the information.

Dylan WIGHT: Just as to how that would work in practice, are you talking about narrowing the public interest test for people that trespass anywhere or just on farms?

Emma GERMANO: Well, we come at this from the perspective of farms, but that might indeed go out to other parts in the community and the economy.

Dylan WIGHT: Sure. Thank you.

The CHAIR: Thank you. Anthony.

Anthony CIANFLONE: Thanks to both the Independent Education Union and the farmers federation for appearing and for your submissions. My question really is around best practice laws. In your respective views for your respective sectors, is there another jurisdiction internationally or across the country, whether in New South Wales or the ACT, which we have heard a lot about through this inquiry with their reforms and regulation, which is more up to date, many argue, than Victoria's at the moment—from the education point of view for your members, I guess internationally or otherwise, what can we look at potentially?

Liam HANLON: We think the balance is slightly better in the laws in New South Wales and the ACT. The things we like out of those laws are things like the duty to consult about when oversurveillance is going to be put in in the workplace. We have got examples of workplaces where our members have just been told, 'All

right, every lesson is going to be filmed now. There's going to be a video camera put up in the classroom and every single lesson is going to be filmed.' Our members had no say on that—it was just an employer directive—whereas we see under the ACT and New South Wales laws our members would at least get to have some good faith discussions with their employer about what the consequences are of putting up a camera in every classroom and recording every lesson, because on the face of it, it seems like 'Well, it's for your protection as well.' Dave, you might speak a bit further to this point.

David BREAR: I think classrooms are places where teachers and students explore ideas, and if students know, they might be reticent or hesitant to venture an idea, because if it turns out that that idea falls flat on its face and it has been recorded, it is a point of some sort of embarrassment for those people. Students who lack a little bit of confidence, for example, might just say nothing and not participate. It is hard enough as a teacher to get kids to participate in discussion and to float a particular idea and to explore a concept, let alone if it is being filmed and parents and other members of the community have access to what has been filmed at the time. But also we talked about this idea that in the ACT and New South Wales—do you want to talk about that?

Liam HANLON: Which part?

David BREAR: About the employer having to actually make it known that they are surveilling.

Liam HANLON: Yes. That is a point that we think is important as well. Again, it ties back to this ability for our members to potentially influence decisions that are being made about their working conditions in the workplace. The fact is under the New South Wales and ACT legislation there has got to be notice put in writing if a new surveillance method is going to be used. We think that is a good thing. We think that giving employees the opportunity to discuss and know exactly what their responsibilities and obligations are with surveillance is something that benefits both the employee and the employer.

David BREAR: We have had examples—and there is one right at the moment actually—where not only do you have cameras and transmission devices, but someone is having their emails monitored because the employer says, 'Well, I own the email system and the network.' So it is just at least making sure that people know that their emails are being monitored. We have got a situation where you might have a person who is a union rep or a health and safety rep or just any staff member, and suddenly they find out that they are hauled over the coals because the employer has been monitoring their emails and they do not have a clue. So we think at the very least that those people ought to be made aware that that is going on.

The CHAIR: Thank you. Would anyone online like to talk about other jurisdictions?

Emma GERMANO: Thank you. The New South Wales *Surveillance Devices Act 2007* was tested in a High Court case between Farm Transparency International Ltd and the state. They actually upheld that section 12 of that Act criminalises the possession of recordings that have been obtained illegally. That was actually upheld. Testing the law was really about whether or not the Act itself was in breach of the freedom of political communication. The majority of judges actually acknowledged that there was a burden to that political communication, but there was a legitimate purpose for that burden of political communication, that being the purpose of privacy. We think that the New South Wales Act actually has the provisions in and around that kind of public interest and political communication that seek to balance—well, the judges have upheld the balance between the need for that kind of freedom of speech, freedom of political expression and public interest with that need for privacy. So we would point to that Act in New South Wales as potentially being better than what we have got in Victoria.

Charles EVERIST: I might just add that the key difference there in New South Wales is that there is no public interest exemption under their Act, and that is something again that the High Court in their judgement noted—that the decision not to have that public interest exemption was a sound position because, as Emma just noted, where you have a public interest exemption that might make it easier for people to undertake unlawful activities such as trespass, that is problematic.

In terms of the ACT legislation, again I do not believe that they have a public interest exemption, but what they do have are exemptions around where footage or recordings are provided to law enforcement agencies and for those law enforcement agencies. For example, if it is evidence that is being presented in a court, it would be okay to disseminate that information. That is fair, because one of the problems we have is animal activists taking footage and then going straight to the media, instead of going to the appropriate place, which is a law

enforcement agency. If animal activists are so concerned about the welfare of animals, the correct place for them to go, to ensure that the proper processes are followed, is to government. But instead, most of the time, as Emma noted, they package footage up and try and put an emotive political spin on that footage; they are not actually trying to seek change to animal welfare practices but change overall to the whole system of how we use animals as a society.

The CHAIR: Thank you. Wayne, I might go to you.

Wayne FARNHAM: Thank you, Chair. I kind of feel as though we could have had two separate ones here today because there is a lot to get through. I suppose when we talk about video surveillance—especially on farming areas, which mine obviously is—who is ever going to forget Gippy Goat Cafe? That was one of the most disgraceful things I have ever seen. But sorry, I will move on.

There seems to be a common thread about consent with surveillance that is coming up in this inquiry. Just to go back a bit—sorry, you rattled me a bit at the start of your contribution when you were telling me about the dark web stuff. But do the teachers know they are under surveillance? Do they sign a consent form? How does it work? What is going on?

David BREAR: Well, at the moment there are two different things going on. There is the employer surveillance, so there is CCTV in schools. A lot of it is outward-facing, so it will not be filming what is going on in the classroom. It will be filming the corridors, outside the school and things like that. So there is an issue to start with that there is no obligation as far as I know for the employer to tell the staff where those cameras are. We have had an instance, for example, where there was a camera in a sports press, and some of the female PE teachers changed in that room and they did not know the camera was in there—just make sure that people are aware of where they are. People have got no issues, particularly if they know where they are in the first instance. It is important that they are there. The other issue is about unauthorised—particularly students’—use of smart devices to film and transmit or post footage or audio files of other students and staff. They do not give consent to that. They do not know that it is going on. The student could have their laptop open on the desk with the camera pointing at you—and they are working on that all day. You would have no idea that you were being live streamed to another—

Wayne FARNHAM: It is not just phones, is it?

David BREAR: No. As I mentioned before, smartwatches—you could have a parent who says to ask the teacher a particular question at a particular time, and the student has actually got their parent on the smartwatch at that time. It is very difficult to regulate that, and so that is why we came to this idea. The VRQA, the body that registers schools, can mandate that schools have particular policies in place, and we think one thing that the VRQA could do would be to mandate that there is a policy to deal with student use of these types of devices and what happens with those students should they breach that policy.

Wayne FARNHAM: Yes. As I said, I think we could have two different things on this one, because there is lot, but I will pass on, Chair.

The CHAIR: Thanks, Wayne. John.

John MULLAHY: I was just wanting to see if the Victorian Farmers Federation wanted to discuss that point on consent.

The CHAIR: On consent? Emma or Charles on consent?

Emma GERMANO: It is frightening listening, because we have had to contemplate the pig welfare inquiry that we have just completed recently and recommendations being made by that committee, although we would say that some of those recommendations are biased and not based in science. It has actually recommended that there should be mandatory CCTV footage put into farm businesses and into abattoirs. Now, a lot of abattoirs as a condition of their licence actually have CCTV footage. It is interesting just riffing off our friends here from a totally different industry. But with the notion of consent and understanding where those cameras are, we are now contemplating this—if a regulator is going to insist that farmers have CCTV footage on their farms, we have kind of moved from that being in abattoirs, and that is often where we see that illegal footage being obtained by animal activists. Then we are going into what some people would call intensive farms, where

animals are kept in sheds. For all intents and purposes, we would say that is intensive. But we are moving away from even that as a definition, because we are saying that inherently there is no more risk to a pig that is living in a shared intensive production facility compared to the sheep that live on my farm.

When you start talking about locations of where cameras are placed, we had this conversation with the Australian meat workers union, talking about whether it is a problem for their staff in regard to privacy, and it was very much around where you put the cameras. They are comfortable with cameras being over the slaughter kill hall, but they do not want them in places like the staff rooms, over entrances in and out of the facilities and potentially being used for the purposes of spying on the staff.

So we would say in regard to how that impacts farms we might be able to be very clear about where you would put cameras into a facility that houses pigs in a giant shed, but how do you keep all of the sheep on Emma's farm under some kind of surveillance to make sure that they are not being subjected to breaches of the animal welfare laws? I mean, do we start talking about having a camera on every fence post or drawing surveillance once a week or something like that? It becomes really problematic when you think about different workplaces and farms that are very variable in their nature and in their production systems and methods. So we would say it is problematic when we start contemplating that we would have CCTV footage that is available to a regulator 24 hours a day on a farm. That, just from a practical perspective, is really difficult to manage or police or maintain how you would go about doing that.

I think there is a similarity there in regard to this notion of consent. It is not just consent of workers, but also nine out of 10 farms in Australia are still family-owned and family-run and the majority of production often happens in a family's home, being their farm. So there is this lack of consent, I suppose, that is able to be given by children who are part of the family business or who live at home on the farm—you might not necessarily be part of the business, but you are a kid who lives out on your farm—and there are privacy issues that then extend into the fact that most of these businesses are family businesses and it is very difficult to pinpoint locations where it would be appropriate to put that CCTV. Again, I just go back to that notion that, yes, consent can be problematic when we are talking about whistleblower activity, but we would not seek to stifle that whistleblower activity, because essentially the person who is the whistleblower is privy to that information that they are receiving, and so if they then are using a surveillance device to pick up that unlawful activity to take to a regulator, we would not seek to stifle that.

The CHAIR: Thank you. John, I know we are nearly running out of time, but I am going to go to you as well just for a last question.

John MULLAHY: The effectiveness of the current laws: in what way are the current privacy and surveillance laws failing your members?

David BREAR: Do you want to talk to that?

Liam HANLON: Yes. We briefly mentioned at the start in terms of the Surveillance Devices Act that it only regulates the use and dissemination of private conversations or private activities, so as a starting point in a classroom it is very difficult to say, 'Well, this is a private conversation or a private activity.' So for the first point there, it would be the case that any covert recording does not fall foul of any of the provisions of the *Surveillance Devices Act*, so that is where we sort of see our members not really having any recourse. The second point to that is, again, our members do not necessarily want to see a student who has covertly filmed them prosecuted under legislation; they sort of just want to be able to go to work and feel that they are able to go to work without having to worry about saying the wrong thing and potentially then being recorded or, you know, doing something silly in the classroom, thinking 'This is just a bit of fun with the class today' and then suddenly being put up on social media to look really stupid. We see the lack of protections there for our members as the real issue.

David BREAR: I think it probably just has not kept pace with the technological change and the proliferation of these devices, you know, because they are everywhere, and they are used as learning tools, so you cannot ban them. So it just has not kept pace with it.

The CHAIR: Emma.

Emma GERMANO: Yes. We would just go back to that public interest exemption. It puts the merits of prosecution very low, because then you have to get into what is in the public interest, and when we are seeing this deep editing, then it can confuse what is in the public interest. We are seeing that prosecutors are not going after this in Victoria. Unlike the teachers, who would not like to see kids being prosecuted, we would love to see some animal activists being prosecuted in some meaningful way at least one time, because what we are seeing is that because the laws both around trespass and the surveillance Act are kind of lax in this area, it is actually creating this complete proliferation and this flagrant abuse of the public's trust when all of this footage is being put on websites and social media.

I mean, if someone puts up something that is misleading, you can have 2 million views or go viral or become the subject of intense scrutiny in a really short period of time, and we are not seeing a law that is able to keep up with how much damage is able to be created because there is not that deterrent in the law or in the Act to start with. So we are seeing it. I would actually say that these loopholes, perhaps, or the way that the Act is written actually almost emboldens activists to do this sort of behaviour, because they know they are going to get around it one way or another. So we might say that it is illegal, but in practice it is actually not illegal, and it is just aiding and abetting these people to do this sort of behaviour, which again is for a completely political perspective. It is not about improving animal welfare conditions, it is simply to make the public feel very guilty about consuming animal products and misleading the public as to how we go about producing those animal products.

The CHAIR: Thank you. I am really mindful of time, so I am sorry, I am going to have to wrap it up there. But I think we could have gone a bit further with some questions. So what I think I might do is say if today has sparked anything you would like to add or submit further from today's discussion, please do so so that we can consider that as part of our deliberations. Thank you so much, Liam, David, Emma and Charles, for your time today. We really appreciate it.

Witnesses withdrew.