

TRANSCRIPT

LEGISLATIVE ASSEMBLY ECONOMY AND INFRASTRUCTURE COMMITTEE

Inquiry into workplace surveillance

Melbourne – Tuesday 3 September 2024

MEMBERS

Alison Marchant – Chair

Kim O’Keeffe – Deputy Chair

Anthony Cianflone

Wayne Farnham

John Mullahy

Dylan Wight

Jess Wilson

WITNESSES

Jenny Kruschel, National Secretary, Textile Clothing Footwear, Manufacturing Division, and

Paris Nicholls, Senior National Industrial Officer, Manufacturing Division, Construction, Forestry and Maritime Employees Union; and

Stephen Fodrocy, Industrial Officer, and

Luke Souvatzis, Official, Australian Manufacturing Workers’ Union.

The CHAIR: Welcome, panel, to this 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.

We thought it would be great just to jump straight into a Q and A type situation to get the most out of our time with you today. The Committee will ask some questions, and if you would like to answer, just raise your hand and please say your name and where you are from. It is not as big a group as the last one, so I think we will be able to cope okay with all this, but if there is anything that we do not get to or you have not had a chance to answer, again, we are happy to take more written submissions after this today.

I will just quickly introduce the Committee. I am Alison, the Member for Bellarine.

Kim O'KEEFFE: Kim O'Keeffe, Member for Shepparton.

Anthony CIANFLONE: Anthony Cianflone, Member for Pascoe Vale.

John MULLAHY: John Mullahy, Member for Glen Waverley.

Dylan WIGHT: Dylan Wight, Member for Tarneit.

The CHAIR: Dylan, I am going to go a little bit out of order and go to you first, if that is okay, for our first question—or have I put you on the spot?

Dylan WIGHT: No, that is all right. I have got questions for days. Thanks for your submissions. I know they take a fair bit of time out of a busy day. My question is probably more specific to Stephen and Luke. We have heard a couple of examples today of how surveillance of workers by particular organisations may be pretty detrimental to workers' mental health and their personal lives and all those sorts of things. I think, continuing along with those examples and getting some more examples, it is always good to know as to how it is perhaps operating poorly. As part of the submission you have got a bit of a case study there that talks about the RACV and using GPS tracking devices in their vehicles. I am going to skip over the bit that talks about the fact that employees may need to take bathroom breaks while inside the car and just go to the facts. How is that operating? When is it operating? Given that they are taking their work vehicles home, what are the concerns around all of that, essentially?

Stephen FODROCY: Thanks, Dylan. Stephen Fodrocy, Industrial Officer, AMWU.

The CHAIR: Thank you for doing that.

Stephen FODROCY: I might start, and then Luke is the relevant organiser for that worksite, so I am sure he can provide some good context on what is happening on the ground. Essentially my understanding is we are dealing with service technicians who are in the yellow patrol vans that you see out on the street. The RACV has started a trial. They have been GPS-tracking the vans for a while now, is my understanding, and they have started a trial involving cameras that have been installed or are going to be installed inside and outside the vans. Now, this might be something that is in other industries, like the transport industry—I do not know. But the priority concern is that they are being recorded whilst they are driving and working, and they might be required to go out to a certain site that means they are on the road all day. If nature requires, they might need to take their meal breaks or they might need to just pop off and go to the bathroom on the side of the road, depending on where they are. They might be in regional Victoria—who knows—and then they come back in.

Now, what we have been told is that the cameras on the outside keep running up to 3 hours after the vehicle is turned off, so if they are needing to do that, which our understanding anecdotally is that they do frequently, our concern is that there are not proper protections for their privacy in that moment. You probably have already heard and read in the submissions that the Surveillance Devices Act does have specific protections for

bathrooms, washrooms, lactation rooms, but it clearly would not be captured in this situation, which is a concern.

The other concern, which is a bit more technological and advanced, relates to the fact that the cameras on the inside, from what we understand, employ technology designed to monitor and analyse the worker's alertness, the attention that they are paying whilst driving. If they are yawning, things like that, it triggers. If they appear to be smoking inside the van—I take it that is against policy. It is supposed to trigger and alert someone. Now, the idea is that it is about safety. From our perspective we see that the impetus, not just with this example but with a lot of the examples in our submission, comes from businesses exercising what they see as their legitimate business rights and interests in protecting their property and their commerciality, their profit.

Our view—and I have read some of the other submissions, and it seems to be a consistent view among the unions at least—is that the balance between that legitimate interest and the interests of our members and workers in Victoria generally is far out. The concern is that if it were really about safety, then you would think that if someone was being analysed via this internal camera as falling asleep at the wheel, that that would trigger something urgent for a response. But what we are being told is that will not be brought up with them until a day or two later. So if they really are falling asleep at the wheel, that is not going to resolve the problem.

That does not so much go to the point about how the data is being analysed as to whether they are tired or losing concentration. My understanding is that it involves algorithms, AI and technology that, in my view, is unreliable and certainly should not be used for the purposes of performance or disciplinary action, not at least without some intervention or oversight by a human actor, because, as I was saying earlier—I have probably gone on for a bit—it is this balance between what is a legitimate business interest but also the dignity and the humanity of the workers. If someone is going to potentially lose their job that should be something that is decided by a person who has the responsibility, who has accountability and who has some degree of empathy, one would hope. After all, in our job—we see it every day—the blanket operation of a rule can cause quite serious harmful consequences and harsh consequences where you need an actual person to intervene to look at it holistically and exercise their human judgement about it rather than relying on an AI which has potentially been designed by someone in another country that we do not know, that is proprietary software that you possibly cannot know and is informed by assumptions that you cannot interrogate. It is quite a big example to give. I was just going to see if Luke had anything that he might want to add that the members have said specifically about how it affects them.

Luke SOUVATZIS: Luke Souvatzis, union official for the AMWU. It was brought about with the RACV because of safety concerns. It was because a guy was doing long shifts out in the country and things like that, and I think someone dozed off and there was an accident. That was in the past. The technology has the ability to notify, so it will go to a central hub and it will notify them of the speed that you are travelling, your cornering, your braking—absolutely everything. It looks at the person and it monitors them. It will see if they are yawning, they are opening their mouth, they are closing their mouth or they are chewing. If they have got a pen in their mouth, it will pick it up—is that a cigarette? All these sorts of things.

As Stephen said, the issue is that the notifications are sent to a central hub. The members will not be notified or told about it until a later date. If you are really concerned about safety, it should be immediate. If you are worried about people dozing off, you should be contacting them—‘Are you all right? Is there something going on? What’s happening?’—but it does not do that. They can set them up so the chairs will vibrate, so if someone is dozing off they can vibrate—that sort of thing. They are not doing it in this case. If it is a safety concern that is one of the big issues. There is monitoring of the external of the vehicle as well. These guys have to leave these vehicles at home, so you park it in your driveway and it will record for another 3 hours. They will see what you do, coming and going—there is no limit to it.

The other thing of concern was the guys do not know when people are tuning in to see what they are doing. There is no indication. There is no little light that comes on to say you are being recorded, someone is looking at you, someone is monitoring you or anything like that. There were a few concerns like that. Obviously, the toilet one was an issue. There are blind spots inside the car. They have been told that if you want to go for a jog on your lunch break and you want to get changed you have got to sit in the passenger seat and get changed or do whatever you want to do. They are some of the main issues the guys had. They do set off beeps as well, so it will beep and indicate every time you are doing one of these things. You get up in the morning and have a bit of a yawn and it will beep and go off and tell you, ‘You’re sleepy. You’re tired,’ and it is sending that back to the

main base as well. They are some of the concerns that the guys have had with the monitoring in the cars at the moment.

The CHAIR: Okay. Thank you. John, do you want to ask anything?

John MULLAHY: On that, was there any consultation associated with the implementation?

Luke SOUVATZIS: Yes, they are going through consultation, so it has been a long, drawn-out process. I think it has been over a year now that they have been doing this consultation process. They do have some vehicles on the road with the full set-up, and they are getting monitored, and they are working through it and ironing out all the bugs. Initially it used to go beeping every two seconds—just beep beep beep—but they have fine-tuned it now to be a little bit more forgiving and understand what the actual person is doing. There has been a long, drawn-out consultation period with it, yes.

Stephen FODROCY: RACV is actually a good example of how it can be done properly, genuine consultation with the members. I do not want to mislead anyone—the consultation has been going on for a while, and we would insist upon it. The workers have been consulted on that. RACV members in some respects, in our view, are lucky because it is a highly unionised workplace, so the company know that we would be up in arms if they did not follow the consultation policies properly. We have those protections in our agreements, and the concern would be if it were not for those consultation protections and clauses, the actual laws that are supposed to provide the minimum entitlements might not be of assistance to someone in a different workplace.

The CHAIR: Yes, and we have heard that today.

John MULLAHY: Lack of consultation—I was going to go across there. Both submissions had our privacy and workplace violence laws as ineffective. Can you give us some examples from your membership of how the current laws are failing your members?

Paris NICHOLLS: I was just going to follow up on what he said because, unrelated to this, earlier today I was speaking with a union official who had that exact same issue that has now been raised, which is the introduction of really significant monitoring of truck drivers. We are much earlier in the consultation process. They have done some initial consultation with members, but we have really had to push to get much clarity on exactly what the policy is going to look like, what exactly is going to be collected, who is going to have access to it and how it is going to be used. This is a fairly highly unionised workplace, so I think more so than other companies they did come to us. But even so we are having to push back to get more information because the initial conversation was really, really broad, and that is I think something that we have tried to emphasise in our submissions.

Probably the biggest thing that comes to me as an industrial officer is workers just not knowing what the go is at their workplace. They see a camera put in. Maybe there is a vague statement put out by the boss, but they do not know who can access the camera, how it can be used, if anything is being stored from it or if it is just running or how long things are being stored. Especially as probably all of these are now digital, it raises lots of issues that our members and I do not even entirely understand to do with how the data is stored digitally, how it is protected and what sorts of assurances our members and workers can have that it is actually being protected. Obviously there have been some pretty high-profile data breaches in the country and around the world, so trying to get that level of transparency is something that is really difficult. I know, Jenny, that you have dealt with it more in disciplinary circumstances, with people not being able to view –

Jenny KRUSCHEL: Yes. Often if someone is in a disciplinary process they are either not allowed to see their image, what is up there, or they are only given what the employer wants them to have there. Sometimes someone might be caught up in a dispute and the company will say it is 10 minutes but in reality there might have been something that happened half an hour before or half an hour after. If they do not want the person that was in the footage half an hour before, they limit what can be accessed. Workers really do not know. They don't know if there is audio and what is done with that audio.

The other thing I would say is they do not know where the surveillance is going. If you have ever worked in a factory, it gets really hot in summer, so people are wearing shorts and T-shirts. That is of concern particularly to a lot of the women members. Who can view the footage? Where is it going? You are jumping up and down on

steps, you are lifting things and you are moving things. That is a big issue of privacy. It is the same thing in laundries; they are really hot. How is that being used? That is a real concern. There is normally no consultation, and what is consultation? Is consultation someone telling you and asking you what you think? Often the union will go there two months after it is up and find out it is up. No-one really knows how or why or where unless workers are quite active and proactive in raising it. People sometimes just accept it is there and hope that nothing goes wrong.

Paris NICHOLLS: And unfortunately I think because there is not that positive obligation in the first place these issues end up getting dealt with down the track when they should not, so if someone does get dismissed, then the fact that they have not been shown that footage is something that can be a factor in our ability to help them. But we just do not think it should have to be dealt with at that stage, after dismissal has taken place and when there is a legal proceeding, as opposed to—if there can be a real, positive obligation put on employers, then it is the sort of thing that can help address those issues up-front.

Jenny KRUSCHEL: Yes. And I would say, look, in a lot of those workplaces there should be no audio. There is no reason for there to be audio. We are all human. We go to work, we want to have a joke, we want to have a laugh. We should not be under such scrutiny. A lot of our members do not get paid a lot of money, and yet it seems like someone wants to watch them 24/7. It seems really unfair. And you know, you have working relationships. People are talking about what is happening at home or any problems they have got. It is really not something for the boss to know or the world to know. And how can that footage or audio be used? People should be free to really be themselves at work and not have someone watching them and listening to them, and they should know where the security is and is not. Often in car parks workers will accept it might be a good idea to have some security, but is there a need inside every workplace to watch people all the time? I mean, they are not earning lots of money. I do not know why employers need to watch them every second of the day.

The CHAIR: Thank you.

Kim O'KEEFFE: You have actually touched on the next question, so I might jump into two questions. My next question was about there were some submissions that mentioned that surveillance should be limited to necessary purposes. You touched on not being able to hear voices and more privacy content to it and what are the necessary purposes, places and times workplace surveillance should be limited to. Is there anything else you wanted to add to that? Is there any scope of what it should be limited to? Does that make sense?

Jenny KRUSCHEL: It does make sense. I think when you think about it, workers are trained to do their job and they have got managers out and about. It should not be used to watch people constantly. I think if there are some real security risks, that is okay. In some cases you might use a camera for if a machine breaks down—there is some camera on it and it sets off an alarm or something to stop it. Even for security, what is the purpose?

Paris NICHOLLS: I think requiring that there be a purpose is something that would be valuable at this stage, because I think in many workplaces it is just taken as a default that particularly camera surveillance is something that will just be put in as a matter of course. I think if we are actually serious about privacy rights—I think a number of pieces of legislation that apply here make it clear that we are or should be, and that is in our submissions—at the very least there needs to be a purpose that is given by an employer for why surveillance is occurring. Safety is obviously the most obvious reason, and I think Stephen mentioned the protection of property. If it is really necessary to protect property, then that can be a legitimate purpose as well. But I think putting that obligation on the company that there be a legitimate purpose and they give a reason is something that just is not there right now.

Jenny KRUSCHEL: And a reasonable reason, and it should not be used as a method to stop other—like, if you want security, put on a gate and lock the gate of a night so people cannot get in and out. Put on some way people can access in and out of the site safely. It should not just be, 'Put up some surveillance and that's the end of the story.' It should be a real purpose, and workers should be able to question that and there should be some way of disputing that. It should be that if you are in a workplace and you have got a problem that cannot be resolved within the workplace, where can you go to have somebody else say, 'Is this reasonable? Is this acceptable? Does it stand up?' Because at the moment I do not think there is really anywhere you can take a dispute like that, and you cannot challenge whether it really is reasonable and you cannot challenge what the data is being used for and you cannot access if it has been used inappropriately. I have heard examples of where

someone has got data and people will be laughing at someone because they are watching it on the screen, and they are not in the room. I mean, that is not appropriate.

The CHAIR: Thank you. Anthony.

Anthony CIANFLONE: Thank you for coming in and for your respective submissions. I represent Coburg, which I like to think is the spiritual heartland of the clothing and textile sector—it had Yakka, Lincoln Mills and men's textiles. But industry has changed quite a lot obviously since those days, so too I am sure workplace surveillance and the way in which it is enforced has changed very much as well. I like the point you made about textiles being really a heavily female-, women-dominated industry, which is really important. Can you talk a bit more about some examples you have come across where surveillance has been used inappropriately in the workplace—you know, by employers on members—in terms of learnings that the Committee can take away from that in terms of future recommendations in that space?

Jenny KRUSCHEL: I think one of the examples is where they put a camera on a walkway to a toilet. Some of the older women who may be going through menopause or maybe other issues need to go to the toilet and they do not want to be seen going three or four times, or they do not want to be seen coming out and having to go back again. It is not uncommon that people might forget things and they have to go and ask a friend, 'Can I have something?' So that is all on camera, and then they might get asked by their supervisor what they are doing going in and out of the toilet. There might be nothing wrong with that. Sometimes if people are really distressed at work and they need to talk to someone, they will go to a friend, 'Can we go somewhere privately?' There are often not a lot of rooms around in those factories to go, so people will try and step into a private space to do that. In some parts of the workplace it is not appropriate. Like I said, in summer people just wear singlet tops and shorts and whatever, so it is really about thinking about where those cameras are placed.

Anthony CIANFLONE: Yes, because under the current Victorian Surveillance Devices Act, for example, such devices are banned in toilets, they are banned directly in bathing rooms, they are banned in lactation rooms and parent rooms. They are the only locations specifically identified in the act, but in terms of the spaces going to and from those spaces, there is obviously a loophole there that potentially the Committee could look at.

Jenny KRUSCHEL: Yes, and sometimes in lunchrooms. Like, the union goes into a lunchroom and you want to have a conversation and you do not want a camera maybe on who is in there and who is not in there. People raise issues with unions. When I organise I never raise an issue when I am in the workplace; I always leave and try and wait about 24 hours, so people cannot trace—unless it is a safety issue—who has said what to me. You know, it is very hard to work out. If you have got cameras, they can go back to the day before, they know who was in with who, who was not, who said something, who did not say something. Sometimes you can work out who has been involved in conversations because people sometimes get excited or they are upset, or whatever. What is really the purpose and what impact it does have on people? Being watched—for anyone that has got a medical problem, that can be quite distressing even if no-one is noticing. Just them thinking someone is noticing can have an impact on someone's mental health.

The CHAIR: Or a hidden disability. John.

John MULLAHY: Just on that, employees are supposed to be told about surveillance going on and that sort of thing. As union reps, when you go into a workplace, I am assuming they do not tell you where is being surveilled and what is not being surveilled.

Jenny KRUSCHEL: No. Often I will look up and realise I am on camera. Sometimes we will wave. Often people do not know and do not realise, because some of those cameras—and I am not an expert—are quite small. Up against big textile machinery or machinery, it is sometimes hard to know if it is a camera or if it is something else. When you put in a lot of new machinery it has all sorts of bells and whistles, so it is not even really clear where they are.

Stephen FODROCY: I would advise any of our organisers to assume that they are on camera, but it does raise a big issue—I think Jenny touched on it as well—and it goes to the question from the Deputy Chair: where is it necessary? It is a big question, and I think it is something that the *Fair Work Act* and these types of Acts deal with all the time: that you cannot set out all of the circumstances in which a certain act is permitted, but you are setting out the principles which we think should govern how we decide what is permitted and what is not. In these circumstances a lot of the concerns, from our point of view, are they should not be introduced

unless there is agreement by a majority of the workers affected. That is obviously our position. Genuine consultation should require the possibility that it is not a decision that has already been made but it is a decision that is being proposed to be made and that there are changes that might be made to that decision—mitigation—that the companies are required to generally consider the concerns that were raised by the employees.

If you have some of that sort of scaffolding and then you talk about having to provide reasonable legitimate business grounds for using it, that goes some way to rebalancing the need to protect the rights of a business to pursue their business but also of the workers. I was thinking about it in terms of they are entitled to rest breaks, they are entitled to meal breaks, they are entitled to recreation and to actually form relationships with their co-workers, and they are also entitled to exercise their rights. So I was thinking about it as rest, recreation and rights. If they are going to have a discussion with a union official who is exercising their rights under the *Fair Work Act*, they should be entitled to assume that that is not going to be recorded and used against them. Similarly, I would think under an authorised representative permit, an OH&S permit, if someone is exercising their right to discuss a health and safety issue, that might not go anywhere beyond that discussion, but they should be able to have that full and frank discussion without assuming that they are being recorded. Now, if you do this in the lunchroom, which is where a lot of these types of activities happen, nothing really prevents the company from installing covert devices to record those discussions. So it could be something like an exception where, if it were that they have genuinely installed devices in those areas, that they are prevented from using that information from that where it relates to certain discussions. Unless there is, say, a safety issue or an emergency concern, then they are prevented from using that information in some way that might affect their workers and diminish—really it is talking about diminishing their rights and their enjoyment of their life.

We are paid, workers are paid—I say ‘we’—to go to the work, do the job and do it faithfully and loyally to the employer, and at the end of the day that is it. We do not go there to make the employer feel good. We do not go there to not make friends. We do not go there just to give up our entire self and being to the employer because they pay us between \$20 and \$50 an hour. I think there is some evidence in our submission and certainly in the Trades Hall submission, which I would like I say we also support—we support the CFMEU Manufacturing Division’s as well—that when workers are perceiving themselves to be under constant surveillance and the threat of disciplinary actions, they are less productive. It affects their mental health and it will have these flow-on effects beyond the workplace. Really there is no legitimate basis for the employer to be pursuing surveillance just because they have decided that is what they are going to do when it can have all of these deleterious effects later on for that worker beyond just the 8 hours a day—or in our experience, beyond 8 hours a day, sometimes 12 hours a day—that you sell to that employer.

The CHAIR: We certainly have heard that today as well, that message. I am just mindful of time. I am so sorry—it has gone really quickly, actually, that half hour. If there is anything further you would like to add to your submission or from today’s discussion, please send it to the Committee.

Jenny KRUSCHEL: Can I just say one thing?

The CHAIR: Yes, absolutely.

Jenny KRUSCHEL: I just wanted to refer to the laundry association submission, and in it they make a comment that it assists with pay and productivity. I would like to say I 100 per cent dispute that. If you look at laundries, most of them only get paid the award. They are like sweatshops. If you have ever visited laundries, it is pretty appalling. So I do not see how their submission supports that. A lot of them do not have EBAs; they actually try to stop people having EBAs. So I do not see how their submission supports that at all. I fundamentally dispute that. We are happy to put something in writing as well.

The CHAIR: Yes, that would be great. We are happy for you to do that. Thank you. Thank you for your time today in answering our questions. It is much appreciated.

Committee adjourned.