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Victorian Government Response 2025

Legislative Assembly Economy and Infrastructure Committee Inquiry into workplace surveillance

VICTORIA State Government | Treasury and Finance

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Victorian Government Response

Parliamentary Inquiry into Workplace Surveillance

1. Introduction

The Legislative Assembly referred the Inquiry into Workplace Surveillance (the Inquiry) to the Legislative Assembly Economy and Infrastructure Committee (the Committee) in May 2024.

The Inquiry sought to review current workplace surveillance practices and how they are regulated in Victoria, including by reference to regulation in other jurisdictions nationally and internationally.

On 13 May 2025, the Committee tabled its final report (the Report) in Parliament.

The Victorian Government welcomes the Report, which provides a comprehensive review of existing surveillance laws and practices in Victoria and concludes that workplace surveillance laws ought to be introduced to keep pace with accelerated changes that have occurred not only in Victoria but globally, with unprecedented rapid technological advances.

1.1 The Inquiry

Forty-four submissions were received by the Committee from individuals, unions, industry groups, academics and Victorian Government bodies. The Committee also held four public hearings and heard from 38 stakeholders.

The Victorian Government provided the Committee with a submission which included an overview of the current landscape, focusing on how evolving surveillance technologies are impacting on workers and workplaces. Industrial Relations Victoria and a number of Victorian agencies including WorkSafe Victoria and the Office of the Victorian Information Commissioner (OVIC) appeared before the Committee to supplement written submissions and respond to queries from Committee members.

The Committee found that there might be circumstances when there are legitimate reasons for employers to undertake workplace surveillance – including where it relates to improving workplace safety, recording workplace injuries or incidents, monitoring the use of resources and property, and detecting fraud and theft. However, the Committee also found that workplace surveillance can become problematic when it is used surreptitiously for other purposes. It found that workplace surveillance that is “excessive” or lacking in transparency may negatively affect workers’ morale, job satisfaction and commitment to their organisation. Consequently, the Committee concluded that there is a need to protect the rights of workers from intrusive workplace surveillance, which it said had moved beyond more basic methods, such as camera surveillance, to far more sophisticated technologies such as keylogging, wearable trackers, biometrics, neurotechnology and artificial intelligence. As a result, the Committee has recommended the development of new technology-neutral laws to regulate workplace surveillance.

The Committee has balanced the circumstances where employers might be justified in using workplace surveillance with the need for fair protections for workers in crafting recommendations for the Victorian Government’s consideration.

1.2 The Report

The Committee’s Report includes 18 recommendations, including that:

- New laws be introduced that:
  - are technology-neutral and require workplace surveillance to be reasonable, necessary and proportionate to achieve a legitimate objective (Recommendation 1).
  - require employers to notify workers of surveillance, specifying the methods, scope, timing and purpose of surveillance and how the resulting data will be used and stored. Employers would also be required to consult employees before introducing or changing surveillance practices (Recommendations 2 and 3).
  - introduce requirements around data security and use to protect employees' personal information and surveillance data, including by:
    - requiring employers to inform employees of who is collecting workplace surveillance data and of the data's security, storage, disposal, and retention (Recommendation 9).
    - prohibiting the sale to third parties of employees' personal data, or any data collected about employees through surveillance (Recommendation 10).
    - requiring employers to ensure any third parties take reasonable steps to protect surveillance data and comply with the employer's workplace surveillance policy (Recommendation 11).
    - restricting employers' collection and use of employees' biometric data to circumstances where there is a legitimate purpose that cannot be achieved through less intrusive means (Recommendation 15).
- Employers who conduct surveillance be required to have a workplace surveillance policy (Recommendation 4).
- Covert surveillance (being workplace surveillance that is not conducted in compliance with proposed obligations including notification and consultation) is limited to suspected unlawful activity, where the employer has obtained a court order, and an independent supervisor is appointed (Recommendation 5).
- Employers are to ensure that a human reviews any automated decision made using workplace surveillance data that affects the rights of a worker, including gig workers (Recommendation 6).
- Employees are provided with education and support in relation to any changes to workplace surveillance regulation (Recommendation 7).
- Employers be required to take all reasonable steps to prevent surveillance of employees by third parties while at work (Recommendation 8).
- The *Privacy and Data Protection Act 2014* be amended to introduce a new Privacy Principle that imposes a positive obligation to comply with the Information Privacy Principles, and to include biometric data in the definition of sensitive information (Recommendations 12 and 14).
- Employees are to be provided access to surveillance data, notified about data breaches, and provided with privacy protections (Recommendations 13, 16 and 17).
- OVIC, WorkSafe Victoria or some other body should be empowered and resourced to enforce compliance with any new laws, with powers to inspect workplaces, investigate/resolve complaints, and prosecute offences (Recommendation 18).

2. The Government Response

This is a whole-of-government response to the Report, given the recommendations and proposed reforms cover several portfolios and engage several government agencies.

While the Victorian Government has referred most of its industrial relations powers to the Commonwealth, most recently via the *Fair Work (Commonwealth Powers) Act 2009* (Cth), section 27(2)(m) of the Commonwealth *Fair Work Act 2009* (Cth) expressly preserves the State's power to regulate workplace surveillance matters. As a referring State, Victoria also has a strong interest in advocating for an industrial relations system which is based on consultation, cooperation and good faith bargaining, underpinned by a safety net of fair employment conditions.

The Victorian Government's public sector employers are responsible for ensuring that their workplace surveillance policies and practices comply with the applicable regulatory framework. Public sector employers, like those in the private sector, have certain relevant obligations, such as an obligation to consult with their employees (and relevant unions) in the event of major change. In some circumstances, proposals to introduce workplace surveillance may constitute a major change that could trigger these consultation obligations.

Victoria also maintains responsibility for several State-specific laws relevant to the workplace (such as the *Privacy and Data Protection Act 2014*, *Occupational Health and Safety Act 2004*, *Long Service Benefits Portability Act 2018* and *Child Employment Act 2003*).

Response to Recommendations

Guide to Response

KEY	
support in full	all elements of the recommendation are supported
support in part	some elements of the recommendation are supported
support in principle	the Victorian Government generally supports the intent or merit of the policy underlining the recommendation, but does not necessarily support the method for achieving the policy
under review	further analysis is required for the Victorian Government to determine its position
not support	the Victorian Government does not support the recommendation

Recommendation		Response	Comment
1	That the Victorian Government introduce new principles-based workplace surveillance legislation that is technology neutral, defines a workplace as wherever work occurs, and places a positive obligation on employers to prove through a risk assessment that any surveillance they conduct is reasonable, necessary and proportionate to achieve a stated legitimate objective.	Support in principle	The Victorian Government acknowledges that the Committee has clearly articulated in its Report the justification for new laws to protect workers from intrusive workplace surveillance. The Government further accepts that the Committee has struck the right balance between recognising the legitimate and beneficial uses of workplace surveillance in certain circumstances and the need for protections for workers from potential harms. The Government will consider legislative options to implement modern and effective technology-neutral laws that are principles-based and place an obligation on employers to justify that the use of workplace surveillance is reasonable, necessary and proportionate to achieve a legitimate purpose. The Government notes that workplace surveillance is a matter that Victoria may continue to regulate (as expressly recognised by the Commonwealth *Fair Work Act 2009,* section 27(2)(m)). Work will be progressed to consider the appropriate form of any new laws. Many of the Committee's recommendations are complementary and implementation work will assess the best settings for the overarching regulatory framework. In particular, consideration will be given to whether amendments to existing legislation would be suitable or if a new stand-alone Act should be introduced. Any overlap with existing laws such as occupational health and safety laws and privacy laws will also be assessed, noting that similar obligations to those proposed by the Inquiry's recommendations already exist in some cases, for example the requirement for employers to consult employees on certain matters. Impacts on both private and public sector employers and employees will be considered and any new laws regulating workplace surveillance will

Recommendation		Response	Comment
			be developed and implemented consistently with related reforms such as working from home laws. The Government will undertake consultation with business, industry, workers, unions and other stakeholders who made submissions to the Inquiry. Implementation work will be subject to consideration of any resourcing impacts and government funding required, as part of a future State Budget process.
2	That the Victorian Government include requirements for notification and disclosure in new workplace surveillance legislation that oblige employers to give 14 days' written notice to workers of workplace surveillance and that the notice specifies the methods, scope, timing and purpose of the surveillance and how the surveillance data will be used and stored.	Support in principle	The Victorian Government supports the intent of this recommendation and will assess legislative options to introduce obligations on employers to give notice to workers before implementing surveillance, including requiring employers to provide details about the use, methods, scope, timing and purpose of surveillance and how any related data will be used and stored. Consideration will be given to the interaction of State laws with the Commonwealth *Fair Work Act 2009*, including the express preservation of Victoria's jurisdiction under section 27(2)(m) of that Act. Consideration will also be given to existing notice requirements in other jurisdictions.
3	That the Victorian Government include the requirement in new workplace surveillance legislation for employers to consult with employees before introducing or changing surveillance practices in the workplace.	Support in principle	The Victorian Government supports the intent of this recommendation and will assess legislative options to introduce consultation obligations. Consideration will be given to the interaction of State laws with the Commonwealth *Fair Work Act 2009*, including the express preservation of Victoria's jurisdiction under section 27(2)(m) of that Act. Consideration will also be given to existing consultation requirements in other jurisdictions.

Recommendation		Response	Comment
4	That the Victorian Government require employers who conduct surveillance to have a workplace surveillance policy that is provided to all employees and reissued to employees whenever the policy is updated.	Support in principle	The Victorian Government agrees that it is reasonable to expect employers who use workplace surveillance to have a written policy on the subject, provide that policy to their workforce, and review and update it as needed. The Victorian Government will undertake further work to develop legislative options available to it to achieve the policy intent of this recommendation, including considering the merits of a standalone policy or leveraging off existing workplace policies.
5	That the Victorian Government restrict covert workplace surveillance to cases where an employee is suspected of unlawful activity, the employer has obtained a court order to undertake the surveillance, and an independent surveillance supervisor has been appointed to the case.	Support in principle	The Victorian Government recognises the importance of transparency in the workplace and the breakdown in trust and risks to privacy that can occur where covert workplace surveillance is used. While the Victorian Government supports the intent of this recommendation, it also acknowledges that there may be legitimate reasons for surveillance, in certain circumstances such as where there is suspected unlawful behaviour or serious misconduct. Further work will be undertaken with careful consideration given to: • any appropriate measures, including legislative options, that can be taken to regulate use of surveillance in the workplace while providing appropriate protections for workers • the operation of similar laws in the Australian Capital Territory and New South Wales, and • existing authorised uses of covert surveillance for instance by law enforcement agencies.

Recommendation		Response	Comment
6	That the Victorian Government require employers have a person with delegated authority review any automated decision made using workplace surveillance data that could significantly affect the rights, interests or employment status of a worker, including a platform worker.	Support in principle	Such an obligation or requirement will afford workers dignity and respect when decisions are made that significantly alter their work rights or status. The Victorian economy is undergoing transformational technological change including increased automation through the use of artificial intelligence. It is imperative that these technologies are used fairly, responsibly, safely, and ethically to maintain and strengthen our social fabric and safety net. Victoria has led the way in Australia with our Inquiry into the Victorian On-Demand or Gig Workforce (Inquiry) in 2018, which has influenced other jurisdictions, most notably and recently the Commonwealth's *Fair Work Legislation Amendment (Closing Loopholes No.2) Act 2024* . An important concern identified by gig workers and their representatives during the Inquiry (and now highlighted by the Committee in relation to workplace surveillance) was the need for workers to have access to a person when decisions are made that affect their rights or work status. Noting that the Victorian Voluntary Standards for platform businesses (and supporting Guidelines) remain in place as best practice guidance, the Victorian Government will consider whether specific changes should be made to those instruments to achieve the intent of this recommendation. The Victorian Government will also engage with the Commonwealth on the extent to which new rights for "employee like" workers and existing rights for employees to challenge decisions about their work arrangements could be further enhanced to require a person with

Recommendation		Response	Comment
			appropriate authority within a business to review automated decisions that affect a person's rights or work status.
7	That the Victorian Government work with employer groups to provide education and support services and material to employers about any changes to workplace surveillance regulation.	Support in principle	A key element of any regulatory model for new laws will require the provision of information to employers to assist them to understand any new obligations, to support successful implementation of any changes to protect workers, and to ensure existing beneficial measures that protect workers continue where appropriate. Implementation of this recommendation would be considered in a future State Budget process, in the context of further work undertaken to develop legislation and the role of any regulator.
8	That the Victorian Government require employers to take all reasonable steps to prevent surveillance of an employee while at work by a party other than the employer without the employee's consent.	Support in principle	The Victorian Government supports the safety and wellbeing of workers and their right to privacy, and recognises the impacts that surveillance in the workplace by persons other than their employer can have. Further consultation will be undertaken to understand the current nature, extent and purpose of third-party surveillance and reasonable steps that may be taken by employers to prevent this. This will inform work to develop options for implementing this recommendation.
9	That the Victorian Government include a requirement in new workplace surveillance legislation that employers must inform employees who is collecting workplace surveillance data, how the data is secured, stored and disposed of, who can use the data and for what purpose, and how long the data will be kept.	Support in principle	The Victorian Government supports greater transparency in relation to workplace surveillance and the data it generates. Legislative options to implement this recommendation will be explored, including how implementation may interact with other recommendations relating to consultation and mandatory surveillance policies and with existing legislation.

Recommendation	Response	Comment
10 That the Victorian Government include a provision in new workplace surveillance legislation that employers must not sell employees' personal data, or any data collected about employees through surveillance, to a third party.	Support in principle	The Victorian Government agrees with the principle that any data collected about an employee should be used for a legitimate purpose related to their employment, not to generate profit. Legislative options to implement a prohibition on the sale of employees' personal or surveillance data will be explored, including considering the interaction with similar proposed reforms at the Commonwealth level.
11 That the Victorian Government include a requirement in new workplace surveillance legislation that employers must ensure that any third party they contract to collect or store workplace surveillance data takes reasonable steps to protect the data and complies with the employers' workplace surveillance policy.	Support in principle	The Victorian Government recognises the importance of robust privacy and data protections and the key role that third party providers play in ensuring data security. Legislative options to implement the intent of this recommendation will be explored, subject to further consideration of the current gaps in relevant laws.
12 That the Victorian Government amend the *Privacy and Data Protection Act 2014* (Vic) to introduce a new Information Privacy Principle, modelled on Australian Privacy Principle 1.2, that places a positive obligation on organisations and employers to ensure they comply with the Information Privacy Principles.	Under review	The Victorian Government will further consider this recommendation in consultation with OVIC and public sector organisations that are subject to the Information Privacy Principles (IPPs). Further consultation is needed to understand the administrative and compliance burden of a new positive obligation to comply with the IPPs, on both public and private sector organisations, as well as the effect of any consequences for non-compliance.

Recommendation	Response	Comment
13 That the Victorian Government include a requirement in new workplace surveillance legislation that employers, upon request by an employee, must give the employee access to workplace surveillance data generated about the employee.	Support in principle	The Victorian Government recognises the importance of transparency and equal access to information where surveillance data may be relevant to a claim or dispute between employers and employees. Careful consideration, including of interaction with Commonwealth laws, will be given to identify any appropriate measures for providing employees greater access to surveillance data about them where it is relevant to a claim, dispute, or investigation.
14 That the Victorian Government amend the *Privacy and Data Protection Act 2014* (Vic) to include biometric data in the definition of sensitive information.	Support in principle	The Victorian Government supports stronger regulatory protections for biometric information, noting the sensitivity of this information and the serious individual and societal harms that can arise from its misuse. The Victorian Government will consider this recommendation in consultation with OVIC and other impacted stakeholders, noting that further consideration is required to understand the current extent and purpose of the current collection and use of biometric data, the practical and operational challenges of imposing additional requirements around the collection and use of this data, and any resourcing implications associated with this recommendation.
15 That the Victorian Government through new workplace surveillance legislation restrict employers from collecting and using employees' biometric data to circumstances where there is a legitimate purpose that	Support in principle	As noted for recommendation 14, the Victorian Government supports stronger regulatory protections for biometric information, noting the sensitivity of this information and the serious individual and societal harms that can arise from its misuse.

Recommendation		Response	Comment
	cannot be achieved through less intrusive means.		Further consultation will be undertaken to understand the current extent and purpose of the collection of biometric data, the availability of less intrusive alternatives, and the practical and operational challenges of imposing additional requirements around the collection and use of this data.
16	That the Victorian Government amend the *Privacy and Data Protection Act 2014* (Vic) to introduce a mandatory incident notification scheme that requires organisations to inform affected individuals and the Office of the Victorian Information Commissioner of a data breach.	Under review	The Victorian Government will further consider this recommendation in the context of any development of new workplace surveillance legislation as per recommendation 1, in consultation with OVIC and other impacted stakeholders. OVIC currently receives incident notifications from public sector agencies under its Incident Notification Scheme established under the Victorian Protective Data Security Standards. However, the scheme only covers certain incidents and compliance is not mandatory for all public sector agencies. Further consultation is required to understand the operational and resourcing impacts of establishing a mandatory scheme, as well as extending the scope of organisations that would be covered by this scheme, noting that extending a scheme to cover all employers engaging in workplace surveillance in Victoria is likely to have resourcing implications and may overlap with existing requirements under Commonwealth privacy legislation.
17	That the Victorian Government extend the privacy protections embedded in the *Privacy and Data Protection Act 2014* (Vic)	Under review	The Victorian Government will further consider this recommendation, in consultation with OVIC and other impacted stakeholders.

Recommendation	Response	Comment
to employees in all sectors by requiring employers operating in Victoria who engage in a workplace surveillance activity to comply with the Information Privacy Principles.		The Government supports the Committee's intent that any new workplace surveillance legislation should strike an appropriate balance between allowing for the reasonable, necessary, proportionate and legitimate use of workplace surveillance with the need to consider and protect the privacy of employees. However, the IPPs alone may not be a sufficient regulatory mechanism to achieve this. Further consultation is required to understand the operational and resourcing impacts of extending the application of the IPPs to all employers engaging in workplace surveillance in Victoria, whether additional or alternative regulatory mechanisms are needed, any resourcing implications and overlap with existing requirements under Commonwealth privacy legislation.
18 That the Victorian Government appoint the Office of the Victorian Information Commissioner, WorkSafe Victoria or other appropriate body as a regulator and adequately resource it to oversee new workplace surveillance legislation with the power to inspect workplaces, investigate and resolve complaints, and prosecute offences.	Support in principle	The Victorian Government will give consideration to options to regulate any new workplace surveillance laws, including the capacity and expertise of existing Victorian agencies - consistent with the Economic Growth Statement and any resourcing implications.

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