

Terms of reference

Queensland's laws relating to workplace surveillance

Background

The Queensland Law Reform Commission (the Commission) has been asked to review and investigate Queensland's laws relating to civil surveillance and the protection of privacy in the context of current and emerging technologies.

Surveillance device technologies have also become increasingly common in workplaces.

Surveillance devices in workplaces most commonly include:

- optical surveillance in and around workplaces;
- data surveillance devices to monitor computer and internet use by employees; and
- tracking devices to monitor the location of employees.

Employers use these devices for a number of legitimate reasons. These include to protect property and detect possible fraud, to monitor employee performance and to ensure employee health and safety.

The use of surveillance devices in workplaces must however be balanced against an employee's reasonable expectations of privacy.

While employers in Queensland are required to comply with general laws in respect of surveillance devices, such as the *Invasion of Privacy Act 1971* and s 227A of the *Criminal Code Act 1899*, surveillance of employees by employers is not specifically regulated in Queensland.

In New South Wales, Victoria and the Australian Capital Territory, legislation specifically regulates workplace surveillance.

The review is not intended to cover other potential intrusions on workers' privacy such as:

- physical or psychological testing (such as alcohol or drug testing),
- physical searches of workers or their possessions, or
- the collection, use or disclosure of personal information in employment records (such as information relating to employment terms and conditions, leave entitlements and health records).

Queensland law already regulates the use of surveillance devices by law enforcement agencies – for example, surveillance conducted pursuant to a warrant or emergency authorisation under the *Police Powers and Responsibilities Act 2000*. The review is also not intended to extend to such provisions in existing legislation.

Terms of Reference

I, YVETTE MAREE D'ATH, Attorney-General, Minister for Justice and Leader of the House, refer to the Commission for review and investigation, the issue of privacy protections for workers in the context of current and emerging surveillance devices in workplaces pursuant to section 10 of the *Law Reform Commission Act 1968*.

Scope

The Commission is asked to recommend whether Queensland should consider legislation to appropriately protect the privacy of workers in the context of current and emerging surveillance device technologies in workplaces, including to:

1. regulate the surveillance of workers by employers using surveillance devices (such as optical surveillance devices, tracking devices, listening devices and data surveillance devices);
2. regulate the communication or publication of information derived from surveillance devices;
3. provide for offences relating to the unlawful use of surveillance devices and the unlawful communication or publication of information derived from a surveillance device;
4. provide appropriate regulatory powers and enforcement mechanisms in relation to the use of surveillance devices;
5. provide appropriate penalties and remedies; and
6. otherwise appropriately protect the privacy of workers in relation to the use of surveillance devices.

In making its recommendations, the Commission should have regard to the following:

- A. the findings from the Commission's review and investigation into Queensland's laws relating to civil surveillance and the protection of privacy in the context of current and emerging technologies;
- B. the protection of the privacy of workers;
- C. the interests of employers;
- D. current legislative and regulatory arrangements in Queensland and other Australian jurisdictions;
- E. the interaction between state and Commonwealth laws, and the jurisdictional limits imposed on the Queensland Parliament;
- F. law reform and parliamentary inquiry reports in other Australian jurisdictions;
- G. the views expressed to the Commission following consultation with stakeholders, including with the community, academics and specialists in privacy law as well as employee and employer groups;
- H. enforcement issues that are likely to arise from any new provisions, including what, if any, additional regulatory or other powers might be required, how provisions will be enforced, and whether any particular authority is best placed to do so;

- I. consideration of the use of surveillance devices in the workplace excludes other potential intrusions on workers' privacy including physical or psychological testing (such as alcohol or drug testing), physical searches of workers, or the collection, use or disclosure of personal information in employment records (such as information relating to employment terms and conditions, leave entitlements and health records);
- J. Queensland's existing law regulating the use of surveillance devices for state law enforcement purposes is excluded from the review; and
- K. any other practical issues likely to arise.

The Queensland Law Reform Commission is asked to prepare draft legislation based on its recommendations.¹

Consultation

The Commission shall consult with any group or individual, in or outside of Queensland, to the extent that it considers necessary.

Timeframe

The Commission is to provide this report by ~~30 June 2020~~² ~~31 August 2020~~
30 April 2021.³

Dated the 24th day of July 2018

YVETTE D'ATH MP
Attorney-General and Minister for Justice
Leader of the House

¹ This amendment to the terms of reference, was made at the request of the Commission, by a letter from the Attorney-General and Minister for Justice, Leader of the House, the Hon Yvette D'Ath MP, to the Chair of the Queensland Law Reform Commission, the Hon Justice David Jackson, dated 7 December 2018.

² Ibid.

³ This amendment to the terms of reference was made by letter from the Attorney-General and Minister for Justice, Leader of the House, the Hon Yvette D'Ath MP, to the Chair of the Queensland Law Reform Commission, the Hon Justice David Jackson, dated 3 October 2019.