



## **SURVEILLANCE IN PUBLIC PLACES IN VICTORIA – SUMMARY**

The Victorian Law Reform Commission is conducting an inquiry into surveillance in Victorian public places. On 30 March 2009 we released our *Surveillance in Public Places* consultation paper. We are seeking feedback from individuals, businesses and organisations on how surveillance is used in Victoria, and how it should be regulated. We will use the responses we receive to make recommendations to the Attorney-General about how the law should be changed.

### **WHAT IS PUBLIC PLACE SURVEILLANCE?**

Surveillance is any deliberate monitoring of a person, with or without a device. It can involve watching, listening to conversations, or tracking another's movements. When it occurs in public places such as streets, roads, shopping centres, and sports and entertainment venues, it is public place surveillance.

CCTV cameras are a common form of public place surveillance. They are increasingly used in streets and shops. Surveillance devices also include sophisticated technology such as x-ray machines (trials in some Australian airports), cameras that can recognise your face in a crowd, and covert devices such as spy-pens and spy-glasses. Mobile phone and other cameras and GPS devices can also be used for surveillance purposes. Surveillance devices are becoming increasingly more affordable and sophisticated.

### **PUBLIC PLACE SURVEILLANCE IN VICTORIA**

Our actions and conversations are increasingly likely to be observed and recorded when we are in public places. A wide variety of organisations in Victoria use CCTV. For example, the media recently reported that there may be as many as 3000 surveillance cameras in Melbourne petrol stations, 2500 in pubs and clubs, 2000 in the Chadstone Shopping Centre, 2000 in post offices, milk bars and newsagents, and 1200 in chemists. Further, a third of all buses have cameras, as do all taxis in the metropolitan area. Citylink and Eastlink toll roads rely on automatic number plate recognition (ANPR) technology, which uses cameras and computer software to automatically read the number plate of a vehicle. This technology is used to charge road users, and is also able to track the journey of a vehicle.

### **BENEFITS OF SURVEILLANCE**

Public place surveillance serves many important purposes. For example, large entertainment venues told the commission that cameras are used to manage crowds, and transport operators suggested that cameras are used to respond to accidents. Many organisations use surveillance for crime prevention. Some local councils use CCTV to reduce anti-social behaviour including vandalism, drug dealing, and drunk and disorderly conduct. Private investigators use surveillance as part of their everyday work, and journalists frequently engage in public place surveillance to report on news and current affairs.

---

## RISKS OF SURVEILLANCE

While surveillance has many useful purposes in Victorian public places it is also important to consider the potential risks such as:

- loss of privacy in public places
- loss of anonymity in public places
- possibility of error and miscarriage of justice
- discriminatory profiling of groups
- voyeuristic and other antisocial uses
- exclusion of groups from public places
- limits to political speech and association
- changes to the nature of public life.

Some of these risks stem from the prevalence of surveillance in our public places. For example, some people believe that being under the constant eye of security cameras may change the way we express ourselves and the way we behave when we are in public.

## HOW SURVEILLANCE IN PUBLIC PLACES IS CURRENTLY REGULATED

There is no single body of law that regulates the use of surveillance in public places in Victoria, and no clear public policy that outlines when public place surveillance is acceptable, and when it is not. Further, no regulator has responsibility for monitoring public place surveillance practices.

The *Surveillance Devices Act 1999* (Vic) regulates the use of some surveillance devices mainly in private, as opposed to public, places. For example, it does not apply to visual surveillance if it occurs outdoors. While the *Privacy Act 1988* (Cth) and the *Information Privacy Act 2000* (Vic) regulate how organisations gather and use personal information, there are no codes of practice that detail what the law requires of surveillance users. A handful of other laws also regulate the most inappropriate forms of public place surveillance, such as the practice known as ‘upskirting’.

## PRINCIPLES FOR REFORM

The commission has devised four draft policy principles that may be used to inform and guide any changes to the way in which surveillance in public places is regulated in Victoria:

1. People are entitled to some privacy when in public places
2. Wherever practicable public place surveillance should be transparent
3. Public place surveillance conducted on a continuous basis should be carried out for a legitimate purpose that is relevant to the activities of the organisation conducting it
4. Public place surveillance conducted on a continuous basis should be proportional to its legitimate purpose.

## REFORM PROPOSALS

Our consultation paper also contains a number of more specific draft options for reform for public discussion. These options can work together or separately.

### 1. A NEW ROLE FOR AN INDEPENDENT REGULATOR

There is a lack of information about the amount of public place surveillance in Victoria. There also appears to be little knowledge amongst users of surveillance and the general public about existing laws relating to the use of surveillance in public places.

Our first option is to provide an independent regulator with the responsibility for oversight of the use of surveillance in public places. This regulator could be the Victorian Privacy Commissioner or another appropriate regulator.

The regulator could be responsible for:

- Monitoring the use of surveillance in public places
- Monitoring the effectiveness of the law
- Informing people about how to comply with the law
- Promoting the use of best-practice standards
- Reporting to parliament.

### 2. NEW VOLUNTARY BEST-PRACTICE STANDARDS

An independent regulator could be given the power to develop voluntary best-practice standards to guide users about appropriate forms of conduct when using surveillance devices in public places.

Specific standards could be developed for different types of surveillance practices. Standards could be developed in consultation with users, stakeholders and the community.

Some of the things that could be included in the standards are:

- Taking measures (such as monitoring staff) to minimise privacy invasion
- Making sure people are aware that there is surveillance, for example by using signs
- Consultation with the community about proposed surveillance.

### 3. MANDATORY CODES

Mandatory codes that apply to particular surveillance practises or surveillance users could be developed. Unlike voluntary standards failure to comply with a mandatory code would result in some sort of penalty, for example a fine. Examples of mandatory codes could be a *CCTV Code of Practice*, or a *Code of Practice for Users of Tracking Devices*.

### 4. A LICENSING SYSTEM

Another option is for surveillance users to be required to obtain a licence before they could operate some devices. This would mean that users of surveillance would need to get approval from a regulator before they could operate some forms of surveillance. A licensing system

would provide the regulator with information about the type and location of systems which would aid the regulator's proposed monitoring role.

A licensing system could operate in relation to the forms of surveillance most likely to lead to abuse, including:

- Covert surveillance
- CCTV involving zooming or monitoring
- X-ray body scanners
- Facial recognition technology.

## 5. CHANGES TO CLARIFY AND STRENGTHEN THE SURVEILLANCE DEVICES ACT

A number of amendments could be made to clarify some provisions in the Surveillance Devices Act. Whilst the Act mainly applies to surveillance in *private* places, reforms that might impact public place surveillance include:

- Ensuring there is no surveillance in public toilets, shower areas and change rooms
- Extending the laws to cover all devices that can track a person or object (for example a mobile phone with GPS)
- Extending the laws to cover more types of devices
- Making it illegal to record a private conversation or activity without the consent of all the people involved, whether or not you are a participant in the conversation or activity
- Introducing civil penalties (such as fines) into the Act to improve enforcement.

## 6. STATUTORY CAUSE OF ACTION

Our last option for public discussion is for parliament to create a right for a person to sue for a serious invasion of their privacy. This option has been proposed by the Australian Law Reform Commission in its recent report.

## CONCLUSION

Some or all of the above options could form part of a new regulatory regime for surveillance in public places in Victoria. The commission has not reached any final views about reform. We encourage submissions on all aspects of public places surveillance and our proposed options for reform. Your answers to the questions set out in Chapter 6 of the report will greatly assist us to prepare our final report for the Attorney General.