28 May 2020

The Hon Vickie Chapman
Attorney-General
PO BOX 464
ADELAIDE SA 5001

via email: AttorneyGeneral@sa.gov.au

Dear Ms Attorney

**Surveillance Devices (Prescribed Circumstances) Variation Regulations 2020 and Motor Vehicle (Audio Visual Recordings) Variation Regulations 2020**


2. The Society notes the Surveillance Devices Regulations seek to permit the installation, use or maintenance of a listening device or optical surveillance device by officers or agents of the Department of Planning, Transport and Infrastructure (“the Department”) through the use of body worn cameras and in-vehicle cameras. The MVA Regulations have been drafted to enable the Registrar to make direction as appropriate with respect to the use of surveillance devices as proposed by the Surveillance Devices Regulations.

3. The Society has considered both the Surveillance Devices Regulations and MVA Regulations and provides brief comment as informed by its Human Rights Committee below.

**The Surveillance Device Regulations**

4. The Society understands the Department uses body worn cameras in Compliance, Investigations, Marine Operations, Rail Operations and Traffic Management and these cameras are used in accordance with the Department’s ‘Compliance, Investigation and Persecutions and Marine Operations Body Worn Camera Policy’. The Policy requires cameras to be worn overtly, display a warning that the camera is recording video and audio, and when interacting with the public, the officer advises the person or persons in the initial greeting that they are wearing a camera and are recording.

5. The Society notes regulation 10(1)(a) of the draft Surveillance Devices Regulations provides for the use of body worn camera and requires that the device is not concealed when being used and the officer or agent wearing the device advises any person that they are intentionally recording by the use of the device that they are wearing the device and that it is being so used.
6. Regulation 10A(1)(b) and (c) permits the use of in-vehicle cameras by the Department, licenced instructors and authorised examiners to record activities conducted under the Motor Vehicles Act 1959 (SA) (“the MVA”), such activities include driver training activities and practical driving tests conducted under the MVA. It is noted in your letter that these measures are intended to be an additional monitoring tool to address some of the issues relating to corruption, poor performance and improper behaviour that currently exist in the industry.

Directions

7. The Society notes that in order to protect against misuse, authorised examiners and licenced instructors (who are private individuals authorised/licensed under the MVA) will only be exempt from the offences contained in the Surveillance Devices Act 2016 to the extent that the device is installed, used and maintained in accordance with any directions of the Registrar of Motor Vehicles.

8. The MVA Regulations provide the Registrar of Motor Vehicles with the power to issue directions in respect of the making of audio visual recordings (including the installation, use and maintenance of recording devices) of driver training activities undertaken by a person holding a licence under section 98A of the MVA Act and practical driving tests conducted by an authorised examiner.

9. While the Society understands the intention of the Surveillance Devices Regulations is to address concerns relating to corruption, poor performance and improper behaviour that exist in the industry, it is also important to ensure that there are adequate safeguards to prevent against misuse of the surveillance recordings and respect the privacy of those involved.

10. At this time there is little detail around what the nature of any directions made by the Registrar will be (noting there is a discretion bestowed upon the Registrar as to whether he or she may make any such directions). The Society notes concerns raised by its Human Rights Committee regarding the absence of information with respect to directions; the lack of safeguards contained in the primary legislation; and the extent to which any evidence gained from the use of such devices would be subject to use or derivative use immunity.

Additional information required

11. The Society would welcome the opportunity to consider any further materials relating to the likely content of directions and the intended use of evidence gained from the use of surveillance devices as proposed.

12. The Society would also be grateful if further information could be provided with respect to the use of in-vehicle cameras and consent, noting that passengers will often include minors. For example, will drivers be required to disclose that there is a camera installed that will record both audio and visual surveillance?

13. There are also additional administrative issues as to how the proposed regulations will operate where drivers own their vehicles, including whether it will be an offence for a driver to turn off the camera when the car is not being used to provide driver trainer activities. The Society also queries who will bear the costs of installing the surveillance device and whether it will be
compulsory for a device to be installed (i.e. will an instructor be prohibited from operating if they refuse to install a device?).

14. While the Society is concerned as to the prevalence of improper behaviour and corruption within the industry, it would be beneficial to have a better understanding of how the proposed measures are intended to address these issues. At this time, it is difficult for the Society to take a view on the regulations due to the lack of detail provided.

Yours sincerely

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