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The Slippery Slope to Function Creep

Monitoring Employees' Workplace Performance through AI Workplace Health, Safety and Wellbeing Tools

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The slippery slope to function creep: Monitoring employees' workplace performance through AI workplace health, safety and wellbeing tools

1. Introduction

In May 2025, the Victorian Parliament published the outcomes of its inquiry into workplace surveillance (*Inquiry into Workplace Surveillance*) detailing the rise in workplace surveillance and the potentially significant adverse impacts on employees. The *Inquiry into Workplace Surveillance* recommended Victoria introduce new workplace surveillance laws to appropriately address this rise.[1]

One aspect of concern about workplace surveillance is the use of AI to monitor workers in new, and often unexpected, ways. AI amplifies the scope of surveillance by drawing on data collected in the workplace from a variety of sources and using this data to make predictions about employees' behaviour and preferences. AI also amplifies the risk of error and bias in these predictions, given the well-established risks of relying on data profiles for understanding complex human behaviours.[2]

Concern about AI workplace surveillance has led to recognition of the prevalence of what is sometimes called 'bossware'.[3] This term refers to workplace surveillance technologies that are marketed for the purpose of monitoring employee productivity within the workplace.[4] These technologies achieve this purpose by capturing data such as keyboard and mouse activity,[5] periodic screenshots of an employee's screen,[6] and office furniture with inbuilt sensors to quantify time spent at a desk.[7]

In addition to 'bossware' productivity monitoring, there are a growing number of AI tools promoted to employers for monitoring employees' health, safety and wellbeing.[8] These tools are promoted for purposes that include reducing burnout and stress, compliance

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[1] Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into Workplace Surveillance* (Parliamentary Paper, May 2025) xi.
[2] See generally Virigina Eubanks, *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor* (St. Martin's Publishing Group, 2018).
[3] Zoë Corbyn, 'Bossware is Coming for Almost Every Worker': The Software you Might Not Realize is Watching You', *The Guardian* (online, 27 April 2022) <https://www.theguardian.com/technology/2022/apr/27/remote-work-software-home-surveillance-computer-monitoring-pandemic>.
[4] Jodi Kantor and Arya Sundaram, 'You're Being Watched: The Rise of the Worker Productivity Score', *The Age* (online, 25 August 2022) < https://www.theage.com.au/business/workplace/you-re-being-watched-the-rise-of-the-worker-productivity-score-20220816-p5ba77.html>.
[5] 'How ActivTrak Works', *ActivTrak*, (Web Page, 2025) <https://www.activtrak.com/how-it-works/>.
[6] 'Snapshots', *TeraMind* (Web Page) <https://democompany.teramind.co/#/reports/snapshots>.
[7] Lila MacLellan and Amy X. Wang, 'Herman Miller's New Aeron Chair is an Office Spy, Collecting Data on Your Every Move', *Quartz* (online, 21 July 2022) <https://qz.com/work/1218346/herman-millers-new-aeron-chair-is-an-office-spy-collecting-data-on-your-every-move>.
[8] See for example Headspace 'How to Cure Burnout | Ask a Headspace Therapist' (YouTube, 9 May 2025) 00:00:00-00:16:17 <https://www.youtube.com/watch?v=D0H5B-YrMyg>.

with public health regulations (such as social distancing), and automatic tracking and responding to occupational health and safety (OHS) incidents.

Despite receiving little attention, health and safety technologies deployed in workplaces are necessarily involved in some degree of surveillance of employees. The concern about the use of workplace health, safety and wellbeing AI tools is that they may also be used for surveillance for other purposes, such as monitoring productivity, performance and even attitude to work, effectively through a backdoor. The Victorian *Inquiry into Workplace Surveillance* describes this phenomenon as 'function creep', where employers implement workplace tools that involve surveilling employees for one purpose but then that surveillance is used covertly for other purposes.[9]

We suggest there is a real risk of function creep occurring with health and safety-oriented surveillance measures. This is because the function of the tools is likely to be widely regarded as acceptable, in some cases even responsible, yet the data collected can relatively easily be repurposed for other uses.[10] Consequently, health and safety-oriented surveillance technologies warrant further scrutiny as a matter of practice, policy and regulation when considering their implementation in the workplace.

2. Examples of OHS AI monitoring tools

The Victorian *Inquiry into Workplace Surveillance* provides some examples of AI health and wellbeing monitoring tools.[11] Establishing function creep in relation to these is likely to be difficult. But notably the Inquiry tends to refer to the kind of tools that may be at risk of this dual purposing in very general terms,[12] and references tools that do not appear to have made it onto the market.[13]

This report seeks to identify the kinds of AI health and wellbeing monitoring tools that may be available to employers now and in the near future. We have relied on public sources for these examples, and there may be others available and being marketed to employers. Our aim is to demonstrate:

- the scope of the AI health, safety and wellbeing monitoring tools that are or are soon to be available; and
- the possibility of function creep.

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[9] Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into Workplace Surveillance* (Parliamentary Paper, May 2025) 33.
[10] Kirstie Ball, 'Electronic Monitoring and Surveillance in the Workplace. Literature Review and Policy Recommendations' (2021) *Publications Office of the European Union* 1, 68.
[11] Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into Workplace Surveillance* (Parliamentary Paper, May 2025) 20-21, 23, 25.
[12] Ibid xi, xiii, xxvii, 1, 19, 20, 27-29, 37.
[13] For example, Fujitsu's AI 'concentration analysis', see ibid 24.

We also note at this point that the effectiveness of at least some of these technologies has not been comprehensively established. This is a further factor in considering the social license and need for careful regulation of these technologies.

AI Health and Wellbeing Monitoring Tools and Availability

Name	Description	In Australia?
Guardian by Seeing Machines	Device that sits on vehicle dashboards that tracks driver eye movements and analyses data to predict fatigue.	Yes.[14]
Headspace	Wellbeing app with mental health AI 'guidance' chatbot and a 'virtual world' available through Meta Quest headsets.	Yes.
Intenseye	Software that analyses existing CCTV footage to alert of worker deviations that may result in health and safety harm to employees.	Yes.[15]
Muse	Headband that tracks brain activity with the goal of optimising productivity.	Yes. Possible to ship to Australia but no Australian office or website.[16]
Neurable	Headphones that also track brain activity with the goal of optimising productivity.	No.[17]
Readi	Software that uses limited information (demographic information, work schedule, and sleep schedule) about employees to predict fatigue. Wearable watch also available but not required for fatigue prediction.	Yes.[18]

[14] 'Contact Us', *Seeing Machines* (Web Page, 2025) < https://seeingmachines.com/contact/>.
[15] '…Intenseye, reports having multiple Australian customers…' in Alicia Bridges, 'Artificial Intelligence Can Monitor Workplaces for Safety Breaches. Experts Say Privacy Laws Are Lagging', *ABC News* (Online) 25 July 2022 <https://www.abc.net.au/news/2022-07-25/ai-workplace-surveillance-tech-raises-concerns/101263028>.
[16] 'Intl Store', *Muse* (Web Page) <https://intl.choosemuse.com/products/muse-2>.
[17] Available for shipping to the US and Canada only, see *Neurable Home Page* (n 22).
[18] Australian customers include BHP, Woodside and Orica, see 'Fatigue Risk Management for Mining Operations', *Fatigue Science* (Web Page, 2025) <https://fatiguescience.com/fatigue-management-for-mining>.

WakeCap	Construction cap that collects data on worker activity including location.	No.
Wenco SmartCap	Construction cap that collects data on brain activity to provide real-time insights into fatigue levels. Also collects data on location.	Yes.[19] Product was developed in Brisbane and is now owned by a Canada-based company.[20]

Details of AI Health and Wellbeing Monitoring Tools

Brain activity

Neurable and **Muse** are two types of headbands that capture information about brain activity with the goal of optimising productivity.

Construction site safety

Wenco SmartCap and **WakeCap** are two types of smart construction caps that contain different technologies used to promote safety by monitoring employees on construction sites.

Fatigue monitoring

Guardian is a system that tracks the eye movements in drivers to predict fatigue. **Readi** is a software that uses basic information about workers in combination with a powerful AI algorithm to accurately predict fatigue *without* the need for direct biometric data.

Hazards

Intenseye is a software that overlays onto existing CCTV in industrial contexts to detect hazards, ergonomic 'deviations' in employees, and employee compliance issues.

Mental health

Headspace is a mindfulness and mental health platform that offers an AI chatbot that encourages reflection. Headspace also provides a virtual reality (VR) mindfulness world available exclusively through Meta Quest.

[19] 'Contact Wenco', *Wenco* (Web Page) <https://www.wencomine.com/contact>.
[20] 'Wenco International Mining Systems Acquires Smartcap, The World's Leading Fatigue Monitoring Wearable Device', *Wenco* (Web Page) <https://www.wencomine.com/news/wenco-international-mining-systems-acquires-smartcap-the-worlds-leading-fatigue-monitoring-wearable-device>.

3. Analysis

This section considers the risk of surveillance function creep arising from the monitoring tools listed.

Data for driver safety systems

Guardian, developed by the Australian company Seeing Machines, is a fatigue monitoring system for drivers designed to enhance safety on the road.[21] This system comprises hardware that sits atop driver dashboards and works in conjunction with machine learning software to identify fatigue-related events. This in-vehicle system 'meticulously tracks a driver's eyes' to provide accurate distraction analysis.[22] Their rates of identifying and intervening in fatigue-related events are bolstered by pairing computer vision software with a human team that runs 24/7 to monitor identified events.[23]

Screenshot from Seeing Machines' 'Data Collection' webpage demonstrating the Guardian system in operation.

Seeing Machines highlights the application of the Guardian system in heavy vehicles like trucks, however occasionally mentions the technology has also been installed in over three million passenger vehicles.[24] The company openly admits the importance of 'extensive data collection programs' beyond data collected in standard product use that ensure high quality data is captured for system training.[25] The data collection programs rely on diverse representations, with the website stating families and children may also require to be involved in these programs.[26] Seeing Machines states that 'data collection is key to our success'.[27] This approach reduces the risk of bias in the tool. It also

[21] Seeing Machines, *Guardian Insights Report 2022-23 Australia & New Zealand* (Report, 2023) 5 <https://6111666.fs1.hubspotusercontent-na1.net/hubfs/6111666/Guardian%20Insights%20Report%202022-2023.pdf?hsCtaTracking=dd90fc58-93f6-414f-8d25-000feacc619b%7C6f416ed6-5fd5-4c22-9b3f-e38835d7d25b> ('*Guardian Report*').
[22] 'Introducing Guardian Generation 3', *Seeing Machines* (Web Page) <https://guardian.seeingmachines.com/au>.
[23] *Guardian Report* (n 21) 4.
[24] 'Data Collection', *Seeing Machines* (Web Page) < https://seeingmachines.com/technology/human-factors/data-collection/>.
[25] See ibid.
[26] See ibid.
[27] See ibid.

illustrates the unavoidable imperative to collect vast quantities of quality data to allow for the continual improvement of health and safety technologies.

Eye tracking and other facial analysis data is considered biometric data. Biometric data can categorically establish the identity of an individual based on biological attributes of a person.[28] This kind of data allows tracking across the workplace, not merely for driver safety.

The *Inquiry into Workplace Surveillance* notes that biometric data is highly sensitive information and by its nature cannot be replaced or changed if a data breach occurs.[29] This is different from other types of information that may be affected by data breaches, like passwords, which can be replaced or changed. This means that in the event of a data breach, malicious seizure of biometric data could result in ongoing identity fraud.[30] Best-practice in data protection addresses this challenge by limiting the collection and use of biometric data for a legitimate purpose that cannot be achieved through other means, and in a way that appropriately balances an individual's privacy with the potential for discrimination.[31] The extensive collection of biometric data by AI health and wellbeing monitoring tools is therefore of significant concern. The benefits of the tools must be carefully balanced against the risks.

Accurate prediction of workers' states with AI

Fatigue Science is a Canada-based fatigue management company that offers solutions to fatigue, including wearable and AI-powered solutions. Fatigue Science highlights that their AI predictive fatigue solution called Readi is almost as effective as their wearable solution that collects direct biometric data. Fatigue Science's products are used by mining giants like BHP, Glencore, Orica, as well as the U.S. Department of Transportation and the U.S. Air Force, among at least 100 other organisations.[32] The company's products are based on the validated 'SAFTE' model that is exclusively licensed to Fatigue

[28] Arin Jain and Arun Ross, 'Introduction to Biometrics' in Anil Jain, Patrick Flynn and Arun Ross (eds) *Handbook of Biometrics* (Springer, 2008) 1, 1.
[29] Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into Workplace Surveillance* (Parliamentary Paper, May 2025) 126.
[30] Office of the Victorian Information Commissioner, Submission 39, p. 9, Professor Peter Holland, Transcript of evidence, p. 7; Peter Holland and Tse Leng Tham, 'Workplace biometrics: protecting employee privacy one fingerprint at a time', Economic and Industrial Democracy, vol. 43, no. 2, 2022, p. 504 cited in Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into Workplace Surveillance* (Parliamentary Paper, May 2025) 108.
[31] Lisa Heap, 'No Blood-No Job: Australia's Privacy Laws and Workers' Rights' (2024) *Centre for Future Work, Australia Institute* 11 cited in Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into Workplace Surveillance* (Parliamentary Paper, May 2025) 126.
[32] 'Keep Workers Safe with Predictive Fatigue Management Software', *Fatigue Science* (Web Page, 2025) < https://fatiguescience.com/>.

Science.[33] The SAFTE model is a biomathematical model that was developed by the U.S. Army Medical Research Development Command following research on soldier wakefulness and fatigue during military operations.[34] Fatigue Science still states 'Military' as one of the 'Industries' it provides for, but with very limited further information.[35]

Fatigue Science's primary product is a software solution called Readi that uses past data collected by the company to predict fatigue *without* using wearables and direct biometric data. In a video on their 'How it Works' page, the company explains how past data obtained from the 'tens of thousands' of wearables they have deployed industrial sites over the past decade power their AI software model to accurately predict fatigue. This past data includes over 5 million anonymised sleeps from shift workers 'tagged' with personal information about the worker's demographics, work schedule, and details about their sleep environment.[36] This data is used in combination with the SAFTE model allows the Readi software predict worker fatigue by simply analysing the worker's schedule, some basic personal demographic information, and potentially a sleep survey.[37]

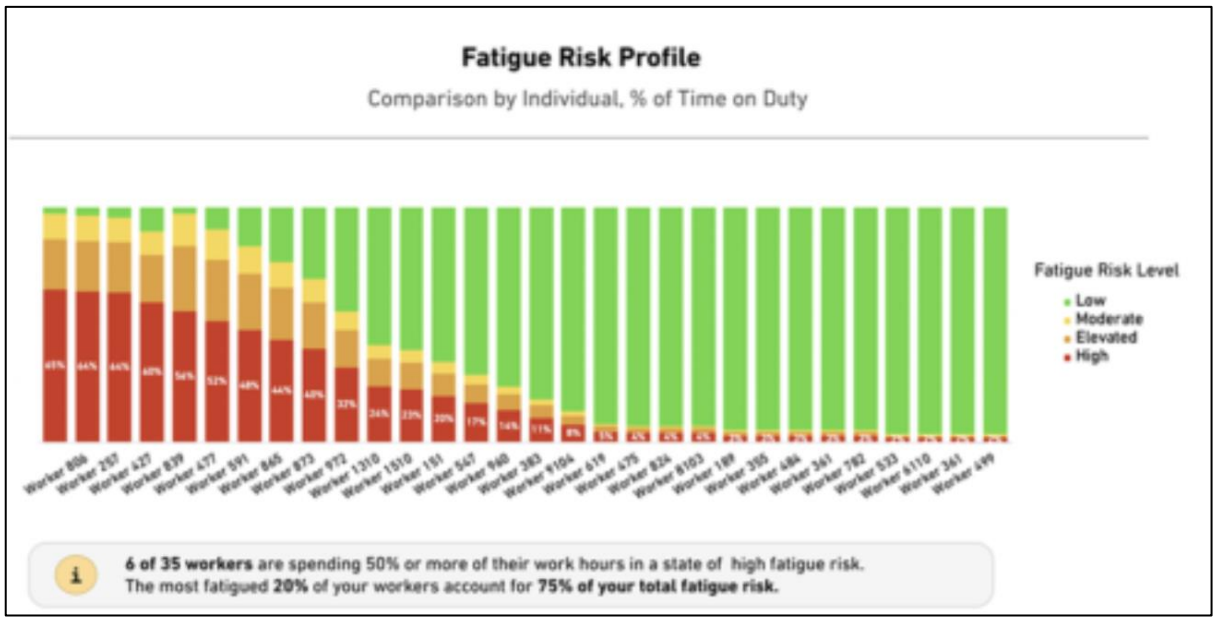
Fatigue Science additionally offers the ReadiWatch, a wearable solution designed for mining operators and other 'safety-sensitive shift workers'.[38] The ReadiWatch tracks the biometric information of employees to inform real-time predictions of fatigue using the SAFTE model. When a worker falls below a certain fatigue rating a notification appears on the watch.

ReadiWatch

Fatigue Science details the benefit of their fatigue prediction software in ascertaining which 'groups' might be 'generating

[33] 'Readi/Supervise', *Fatigue Science* (Web Page, 2025) <https://fatiguescience.com/readisupervise-fatigue-interventions>.
[34] 'What's behind the Readiband? How we measure and predict fatigue', *Fatigue Science* (Web Page, 2025) <https://fatiguescience.com/blog/whats-behind-readiband-measure-predict-fatigue#:~:text=From%20this%20research%2C%20a%20biomathematical,athletic%20performance%20and%20reaction%20time.>.
[35] 'Predict fatigue. Prevent accidents. Maximise performance', *Fatigue Science* (Web Page, 2025) <https://fatiguescience.com/applications/military-fatigue-performance-management>.
[36] Most information on how the product works is found in the 'How It Works: Readi Fatigue Management Software' explainer video found on Fatigue Science's home page, see 'Keep Workers Safe with Predictive Fatigue Management Software', *Fatigue Science* (Web Page, 2025) <https://fatiguescience.com/>.
[37] 'Interview: Reducing Risk to Mine Workers with Proactive Fatigue Management', *Mine* (Web Page) < https://mine.nridigital.com/mine_australia_jul24/mine-worker-safety-proactive-fatigue-management>.
[38] 'ReadiWatch', *Fatigue Science* (Web Page, 2025) <https://fatiguescience.com/readiwatch-wearable-fatigue-monitoring-system>.

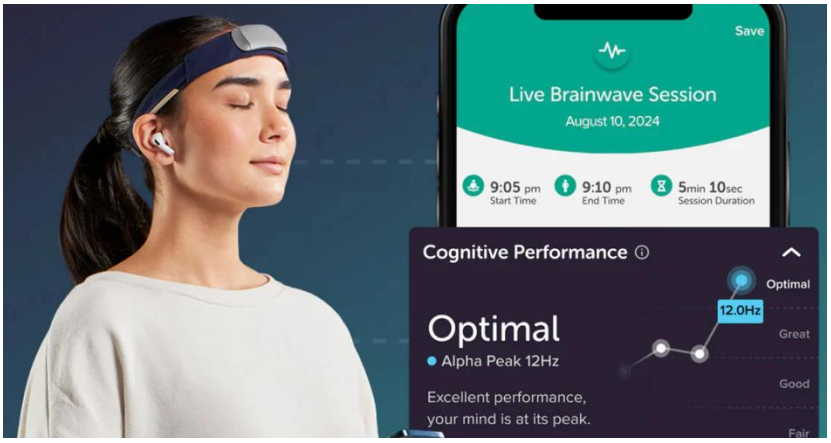
disproportionate levels of risk exposure', or if 'risk contribution level is concentrated among a few workers'.[39] For businesses, this AI solution removes barriers associated with real-time tracking technologies and biometric data collection, including cost considerations and privacy concerns.[40] Fatigue Science says their software - the 'world's first 100% predictive fatigue management software' - will 'keep unions happy' because it does not require workers to be monitored by wearables.[41] For workers, this AI solution means that employees are increasingly able to make advanced inferences about workers' states with even the most basic information that does not require ongoing or detailed monitoring of the worker. The effectiveness of AI for this sort of workplace surveillance raises concern about the effectiveness of data protection laws that may only prevent direct collection detailed of biometric data.



A demonstration of the 'ReadiAnalytics' page for enterprises to track trends in groups and individuals.

[39] Understand WorkForce Fatigue Risk with Real Data', *Fatigue Science* (Web Page, 2025) <https://fatiguescience.com/readi-analytics>.
[40] See ibid.
[41] 'Fatigue Risk Management for Mining Operations', *Fatigue Science* (Web Page, 2025) <https://fatiguescience.com/fatigue-management-for-mining>.

Neuroergonomics via headbands



Screenshot from Muse's homepage.

Two United States-based technology companies – **Neurable** and **Muse** – use headphones and a headband respectively to track brain activity with the goal of optimising productivity.[42] While both of these products are primarily targeted to individual users, they also advertise to teams and businesses.[43] Neurable utilises electroencephalogram (EEG) technology embedded in headphones to generate insights about when and where an individual focuses best, thereby allowing individuals to adapt their routines and subsequently avoid burnout.[44] EEG technology measures electric signals in the brain to track brainwaves that can potentially provide insights into different mental states.[45] Muse, in addition to containing EEG technology, incorporates other technologies including, but not limited to, functional near-infrared spectroscope (fNIRS). fNIRS measurements can provide insights into functional activation within the brain.[46]

These technologies fall under the discipline of neuroergonomics, an emerging discipline that is defined as the study of human brain function in relation to behavioural performance in everyday settings.[47] Neuroergonomics potentially has the ability to generate important insights about the human experience at work, potentially allowing tasks and procedures to be more effectively adapted to employees.[48] However, the

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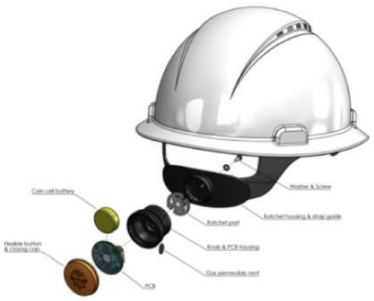
[42] 'Work Smart Not Longer', *Neurable* (Web Page) < https://www.neurable.com/products?variant=45976725881078> ('*Neurable Home Page*'); 'Train Your Brain & Find Your Focus', *Muse*, (Web Page) <https://choosemuse.com/>.
[43] 'Innovative, Data-Driven Solutions for Your Business', *Muse* (Web Page) <https://choosemuse.com/pages/business>; 'Bringing the Power of BCI to your Teams', *Neurable* (Web Page) <https://www.neurable.com/partner/neurable-for-teams#:~:text=Neurable%20is%20revolutionizing%20how%20we,Maximize%20productivity%20and%20focus>.
[44] *Neurable Home Page* (n 22).
[45] Mahsa Soufineyestani, Dale Dowling and Arshia Khan, 'Electroencephalography (EEG) Technology Applications and Available Devices' (2020) 10(21) *Applied Sciences* 7453, 7453-8.
[46] Ibid.
[47] Chang Nam, *Neuroergonomics: Principles and Practice* (Springer Cham, 2020) ix.
[48] Paul Brandt-Rauf, 'Brain Monitoring May Be the Future Of Work – How It's Used Could Improve Employee Performance Or Worsen Discrimination', *The Conversation* (online) 8 January 2025 <https://theconversation.com/brain-monitoring-may-be-the-future-of-work-how-its-used-could-improve-employee-performance-or-worsen-discrimination-244379>.

technologies raise several risks. There is a risk of employers, and even employees, mis-interpreting the information available from such tools, which measures brain activity while performing specific tasks not the intellectual 'effort' or 'skill' being applied. Brain monitoring is a highly invasive form of monitoring that may be seen as intruding on workers' privacy in profound ways. There is also scope for more negative effects to arise if the adoption of these types of technologies is left unchecked.[49] Within this concern, neuro-discrimination is likely to become increasingly relevant as these technologies unlock new capabilities.[50]

Unclear purposes in 'smart construction caps'



Screenshot of WakeCap (Saudi Arabia) from website.

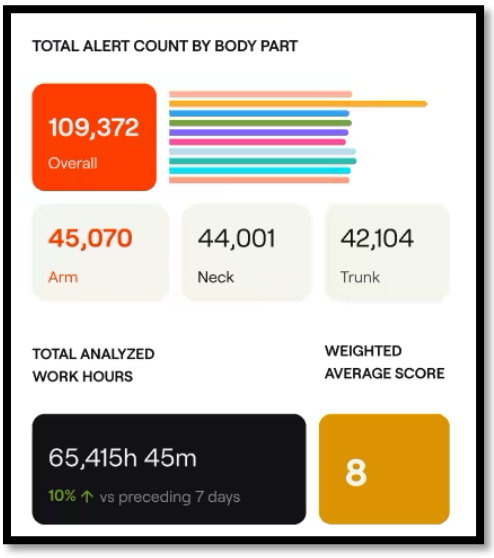
WakeCap (Saudi Arabia) and **Wenco SmartCap** are two brands of 'smart construction caps' that monitor employees for health and safety, and more. Wenco SmartCap uses an EEG-equipped headband to collect data for the primary purpose of eliminating fatigue incidents.[51] WakeCap uses a node at the back of the cap to collect data for the primary purpose of monitoring workforce activity, collecting 'profit-impacting' data for projects.[52] Despite the similarities in these two caps, their purposes are driven by significantly different goals. Wenco's goal is centered around promoting employee safety, while Wakecap's goal is focused on maximising profit. Both products collect data on workers in very similar contexts, yet the exact use of this data becomes unclear as the primary purpose of adoption changes. If WakeCap can generate 'profit-impacting' data, Wenco probably can too, yet such a possibility isn't mentioned in their promotional material. In this way, companies may cloud their own attempts to monitor and surveil employees with purposes that claim to improve health and safety despite this not being their only purpose.

[49] See ibid.
[50] Ekaterina Muhl and Roberto Adorno, 'Neurosurveillance in the workplace: do employers have the right to monitor employees' minds?' (2023) 15 *Frontiers of Human Dynamics* 1, 2.
[51] 'Wearable Technology that Eliminates Fatigue Incidents', *Wenco* (Web Page) < https://www.wencomine.com/our-solutions/safety>.
[52] 'Introducting WakeCap VerifyTime', *WakeCap* (Web Page) < https://www.wakecap.com/>.

The 'health and safety' justification

Intenseye is a computer vision software that uses existing CCTV footage to analyse and detect risks in the workplace.[53] This detection includes what Intenseye labels as 'ergonomic deviations' pictured in the image on the right. These ergonomic deviations include movements as small as changes in wrist angle.[54] Intenseye states in their privacy policy that they are not able to fulfill the clarification obligation for data processing activities as they provide their services by connecting to existing CCTV, a process authorised by their customers.[55]

Screenshot of Intenseye's technology demonstration on their website. Example of the 'ergonomics' function.



Example of dashboard of insights provided to employers by Intenseye.

The Intenseye use policy states that data from situations identified as 'faulty or hazardous' are collected and stored by Intenseye for artificial intelligence model training purposes. Interestingly, a disclaimer in their data processing policy states that '… customers may need to add "ensuring occupational health and safety" or any other statement they deem appropriate among the data processing purposes…regarding camera surveillance activities'. This disclaimer highlights the use of health and safety as an objective to justify and rationalise broader surveillance activities.

[53] 'Transforming Workplace Safety with Computer Vision AI', *Intenseye* (Web Page) < https://www.intenseye.com/>.
[54] 'Automate Ergonomic Assessments with AI', *Intenseye* (Web Page) <https://www.intenseye.com/core-ai/ergonomics>.
[55] 'Privacy Policy', *Intenseye* (Web Page, 12 June 2024) <https://www.intenseye.com/privacy-policy>.

AI and VR (virtual reality) data collection

Headspace is a mental health app that provides meditations, online therapy, 'guidance' through an AI chatbot, sleep resources and other mental health programs. Headspace also offers Headspace XR, a virtual reality app available exclusively on Meta Quest, Meta's virtual reality headset.[56] The app is targeted to individuals as well as employers to manage their employees' health, promoting 'mindful investment, meaningful savings' for business. Headspace guarantees value on investment for employers by putting their fees at risk based on therapeutic outcomes that are achieved for employees and overall engagement.[57] Headspace for employers is also available to the families of employees, including their children.[58]

Ebb, Headspace's AI chatbot.

Headspace's chatbot, named 'Ebb', is marketed as an 'empathetic AI companion' that 'helps you navigate life's ups and downs'.[59] Ebb can be used to 'unpack' what's on a user's mind, including relationship issues, work stress or sleep issues.[60] Headspace states Ebb is available 24/7, and that you can 'share what's on your mind with Ebb'.[61] Conversations with Ebb may be used for various undisclosed purpose, with Headspace stating conversations may be used to improve the chatbot's performance, in conducting quality assurance audits, or any other reason that qualifies as a 'need-to-know basis' for employers.[62]

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[56] 'Headspace XR: Mindfulness & Meditation', *Meta* (Web Page) < https://www.meta.com/en-gb/experiences/headspace-xr-mindfulness-meditation/2449687086995710 2/?srsltid=AfmBOorxcx1hyl11cHDhFynflXsD6rZWwO5-Rk6OFNoIqcVGhP33i80x>.
[57] 'Mindful Investment, Meaningful Savings', *Headspace* (Web Page) < https://organizations.headspace.com/impact>.
[58] 'Headspace for Employers', *Headspace* (Web Page) <https://organizations.headspace.com/employers>.
[59] 'Meet Ebb', *Headspace* (Web Page) < https://www.headspace.com/ai-mental-health-companion?origin=homepage&gad_source=1&gad_campaignid=1940234794&gclid=Cj0KCQjwxo_CBhDbARIsADWpDH4kUI53kt4JceaED8ZotAFABX_zn2OHrLDqQ263atEuZcKKxpblvqgaAkujEALw_wcB>.
[60] Ibid.
[61] Ibid.
[62] 'Meet Ebb', *Headspace* (Web Page) < https://www.headspace.com/ai-mental-health-companion?origin=homepage&gad_source=1&gad_campaignid=1940234794&gclid=Cj0KCQjwxo_CBhDbARIsADWpDH4kUI53kt4JceaED8ZotAFABX_zn2OHrLDqQ263atEuZcKKxpblvqgaAkujEALw_wcB>.

Headspace has also published a virtual reality (VR) app compatible with Meta's VR headsets. This VR app is not marketed to employers or a part of their employer packages; however, under Headspace's privacy policy, the company has the right to collect information about users if they use the VR app and the right to share this information with employers and other third parties in certain circumstances.[63] The app collects information on a user including, among other types of information, tracked eye movements, tracked hand movements, information from the headset's microphone, and spatial data of a person's surrounding environment when a user uses the headset. [64]

Person using a Meta Quest headset to experience Headspace's VR app. Source: Future.

4. Observations

Every law reform body that has reviewed workplace surveillance and privacy in recent years has recommended significant reform.[65] Additionally, in August 2025 the New South Wales parliament tabled a Bill (*NSW Workplace AI Bill*) proposing changes to the Work Health and Safety Act 2011 to cover the use of AI systems in the workplace.[66] Under the proposed changes, 'digital work systems' must not result in risks to the health and safety of any person, a requirement that includes considering the risk of 'excessive or unreasonable monitoring or surveillance of workers at work…'.[67] The requirement to consider risks to health and safety is necessary, but also paradoxical given that some of these technologies have the stated primary purpose of improving health and safety.

The recent Victorian *Inquiry into Workplace Surveillance* has appropriately recommended that Victoria introduce technology neutral regulation in order for laws to

[63] 'Headspace Privacy Policy', *Headspace* (Web Page, 1 March 2025) < https://www.headspace.com/privacy-policy>.
[64] 'Headspace XR: Mindfulness & Meditation', *Meta* (Web Page) < https://www.meta.com/en-gb/experiences/headspace-xr-mindfulness-meditation/2449687086995710 2/?srsltid=AfmBOorxcx1hyl11cHDhFynflXsD6rZWwO5-Rk6OFNoIqcVGhP33i80x>.
[65] Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into Workplace Surveillance* (Parliamentary Paper, May 2025) 83.
[66] Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025 (NSW) sch 4.
[67] Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025 (NSW) sch 4.

adapt to new technologies that emerge.[68] This technology neutral regulation would be a principles-based approach that would require workplace surveillance to be 'reasonable, necessary and proportionate to achieve an employer's legitimate objective'.[69] This approach would assist in accommodating the diverse types of AI health and wellbeing monitoring tools of the kinds considered in this report.

The *Inquiry into Workplace Surveillance* highlights the need for employers to assess the need for workplace surveillance and to clearly define the purpose of workplace surveillance.[70] Recommendation 2 of the *Inquiry into Workplace Surveillance* is to require employers to notify employees of the methods, scope, timing and purpose of surveillance.[71] However, it will be important to ensure that the legitimacy of a purpose needs to be assessed against the impact on employees' privacy *and* the verified efficacy of the tools. Moreover, the purpose of a tool must be contained to legitimate purposes and strictly ringfenced against broader, unauthorized surveillance. It will be necessary to enact measures that explicitly prohibit surveillance that falls outside of any stated purpose of surveillance.

Additionally, such tools, even where assessed as having a legitimate purpose, should be deployed in a manner consistent with their high-risk use, and subject to the kinds of guardrails and governance set out in frameworks such as Australia's Voluntary AI Safety Standard.[72]

[68] Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into Workplace Surveillance* (Parliamentary Paper, May 2025) 89.
[69] Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into Workplace Surveillance* (Parliamentary Paper, May 2025) 134.
[70] Australian HR Institute, Submission 10, p. 4 cited in Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into Workplace Surveillance* (Parliamentary Paper, May 2025) 81.
[71] Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into Workplace Surveillance* (Parliamentary Paper, May 2025) 93.
[72] National Artificial Intelligence Centre, Department of Industry, Science and Resources, *Voluntary AI Safety Standard* (August 2024).

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