

WHEN IS IT OKAY TO RECORD AND PUBLISH PRIVATE CONVERSATIONS?

Recently, the popular press has been broadcasting secret recordings made by a former One Nation insider. The Federal Opposition has used the recordings to call for a police investigation. For her part, Senator Pauline Hanson has sought an injunction, preventing the release of any further recordings into the public domain.

The ability to record and/or publish private conversations in Queensland is governed by the *Invasion of Privacy Act 1971* ("Act").

When it comes to recording private conversations, it is an offence to use a listening device (other than a hearing aid) to overhear, record, monitor or listen to a private conversation. There are a number of exceptions. Most importantly, where the party recording the conversation is a party to the conversation. Other exceptions include where the party unintentionally hears the private conversation on a telephone or where the party is an employee of the Commonwealth or a police officer in certain circumstances, such as the execution of a warrant.

Not surprisingly, the Act goes on to provide that a person is also guilty of an offence if they communicate or publish a report of, the substance of, meaning or purported meaning of a private conversation that has come to his or her knowledge as a result of the unlawful use of a listening device. The maximum penalty for breach of this section is two years imprisonment.

If however you have lawfully recorded a private conversation, for example where you were a party to it, can you communicate or publish the details of that conversation to others? The Act provides that it is an offence to communicate or publish any record of the conversation made, as well as any statement prepared from that record, to any other person. Again, there are exceptions to this, such as:

1. where the communication or publication is made to another party to the original conversation or with the express or implied consent of all other parties to the conversation;
2. when it is made during the course of legal proceedings; and
3. where the publication is not more than is reasonably necessary in the public interest, in the performance of a duty of the publisher or for the protection of the lawful interests of that person.

It is important to note that these comments relate to conversations in person. The recording of telephone communications is strictly prohibited by the provision of the *Telecommunications (Interceptions and Access) Act (Cth)*.

For advice in relation to your personal circumstances, please do not hesitate to contact our Senior Associate, Melanie Husband on 07 4036 9700.