

BEWARE IF YOU RECORD A CONVERSATION IN NSW IF YOU ARE IN CONTRAVENTION OF THE SURVEILLANCE DEVICES ACT.

Many inquiries received by Lyonswood Investigations and Forensic Group relate to the recording of conversations. Unfortunately, many people making these inquiries believe that anyone can record a conversation without the permission of all parties to that conversation. The NSW Surveillance Devices Act 2007 sets out very clearly under what circumstances a conversation can be recorded by whom and for what purpose.

Sadly many in the investigation industry not only advertise this service they also provide and install listening and tracking devices which also fall under this legislation. If you take the risk and get caught then the consequences are great.

The media it seems felt that they were immune to or perhaps exempt from this legislation however today's findings by a Sydney Supreme Court Judge make it very clear how careful investigators and reporters need to be.

The key to these matters is whether the person recording the conversation has a "lawful interest". Section 3 (b) (ii) would appear to have been this journalists downfall.

(3) Subsection (1) (b) does not apply to the use of a [listening device](#) by a [party](#) to a [private conversation](#) if:

(a) all of the principal parties to the conversation consent, expressly or impliedly, to the [listening device](#) being so used, or

(b) a [principal party](#) to the conversation consents to the [listening device](#) being so used and the [recording](#) of the conversation:

(i) is reasonably necessary for the protection of the lawful interests of that [principal party](#), or

(ii) is not made for the purpose of communicating or publishing the conversation, or a [report](#) of the conversation, to persons who are not parties to the conversation.

ACA reporter found guilty of breaching listening devices law

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A Current Affair reporter Ben Fordham and former producer Andrew Byrne outside court last year. *Photo: Brendan Esposito*

A Supreme Court judge has labelled *A Current Affair* reporter Ben Fordham "disrespectful" for failing to appear in court, before she found him guilty of breaching the Listening Devices Act.

Fordham, former *ACA* producer Andrew Byrne and Channel Nine were charged with breaching the Listening Devices Act in relation to a story that aired in May 2008, showing a former Waverley mayor, James Markham, allegedly ordering a hit on a male escort.

Justice Elizabeth Fullerton today convicted Fordham of one of four charges against him, that he knowingly recorded a private conversation on May 28, 2008.

She noted it was done "in his absence" after being told he was in Canberra for work.

"Why should I proceed to find an offence proved against a defendant in criminal proceedings in his absence? This is a serious matter," Ms Fullerton said to Fordham's barrister, Hament Dhanji.

"I find that unacceptable," she continued.

"He's in Canberra? Doing what?"

Mr Dhanji said Fordham had meant no disrespect. He said he was there to represent Fordham in his absence and that the executive producer of *ACA* was also in attendance on Fordham's behalf.

"He means no disrespect. Frankly his attitude is disrespectful," Ms Fullerton said.

Ms Fullerton convicted Byrne on all four charges of breaching the Listening Devices Act but acquitted Channel Nine.

A sentence hearing was set down for August 19. The Crown has already indicated it will not be seeking a custodial sentence.

Bellinda Kontominas is a *Herald* Court Reporter.