

LEGAL GUIDE TO SURVEILLANCE LEGISLATION IN QUEENSLAND

Introduction

Technology-facilitated stalking and abuse is the use of technology (such as the internet, social media, mobile phones, computers, and surveillance devices) to stalk and perpetrate abuse on a person.

Such behaviour includes:

- Making numerous and unwanted calls to a person's mobile phone
- Sending threatening and/or abusive messages (text messaging, Whatsapp, Snapchat, Facebook messaging, Twitter)
- Hacking into a person's email or social media account to discover information about them
- Hacking into a person's email or social media account to impersonate them and send abusive messages to family/friends of that person
- Using surveillance devices to spy on a person
- Using tracking devices to follow a person
- Sharing, or threatening to share, intimate pictures of a person

This legal guide is one of a set of three guides that looks at areas of law relevant to people experiencing technology-facilitated stalking and abuse.

Legal Guide to Surveillance Legislation in Queensland

This guide looks at what the law says about **surveillance devices** – when it is an offence to use them and what the restrictions are on sharing information/videos/pictures obtained through the use of surveillance devices.

For information on other areas of law see:

Legal Guide to Relevant Criminal Offences in Queensland

This guide looks at the various **criminal offences** that may apply to a person who is perpetrating technology-facilitated stalking and abuse.

Legal Guide to Domestic Violence Protection Orders

This guide looks at how people can obtain protection orders from the court to protect them from technology-facilitated stalking and abuse. In Queensland these protection orders are called **domestic violence protection orders (DVOs)**.

DISCLAIMER: The use of technology-facilitated violence is a developing area of the law. The legal information, examples and scenarios contained in the guide are intended to explain the law in general terms only and are not legal advice. They cannot be relied upon or applied by readers in their own cases. Each set of circumstances needs to be looked at individually. You should seek legal advice about your own particular circumstances.

Terminology

Language of 'Victim' vs 'Survivor'

Some women who are experiencing, or who have experienced, domestic violence use the term 'victim' of domestic violence to describe themselves. Others believe the term 'survivor' of domestic violence more accurately reflects their experience.

Whilst acknowledging that each woman's experience is unique and individual to her circumstances, for consistency, these guides will refer to women who are experiencing, or who have experienced, domestic violence as 'victims' of domestic violence.

Gender and Language

While domestic violence can happen in many circumstances (including in non-heterosexual relationships), in the vast majority of reported domestic violence cases men are the perpetrators and women the victims.

For this reason these guides use 'he' to refer to perpetrators and 'she' to refer to victims. This is not intended to exclude other situations.

Criminal Offence (or offence)

A criminal offence is an offence against the State. It is commonly referred to as 'breaking the law'.

Summary offence

Less serious offences (such as obscenity or threatening violence), are known as summary offences. Summary offences are dealt with by the Court of Summary Jurisdiction.

Indictable offence

More serious offences (such as murder, manslaughter, sexual assault) are known as indictable offences and are usually dealt with by the Supreme Court.

Charge

When a person is charged with an offence, it means that the police have formally accused that person of committing an offence.

Conviction

When a person is convicted of an offence, it means that person has either pleaded guilty to committing the offence, or a court has found that person guilty of committing the offence.

Penalty unit

A penalty unit describes the amount payable for a fine.

Penalty units are used instead of dollar amounts because the rate for penalty units is indexed for inflation and may therefore change from time to time.

The Department of Treasury and Finance set the dollar amount for one penalty unit; this value is updated on 1 July each year. As of 1 July 2015: one penalty unit = \$153.

Therefore, an offence with a maximum penalty of a fine of 50 penalty units will have a maximum fine of \$7,650.

SURVEILLANCE LEGISLATION IN QUEENSLAND

The *Invasion of Privacy Act 1971* (Qld) ('the Act') regulates the use of the use of listening devices in Queensland. It does not address the regulation of other surveillance devices such as optical surveillance, tracking, and data surveillance devices.

1. Use of Listening Devices

A 'listening device' means any instrument apparatus, equipment or device capable of being used to overhear, record, monitor or listen to a private conversation simultaneously with its taking place. It does not include a reference to a hearing aid or similar device used by a person with impaired hearing to overcome the impairment and to permit the person only to hear sounds ordinarily audible to the human ear.

A 'private conversation' means any words spoken by one person to another person in circumstances that indicate that those persons desire the words to be heard or listened to only by themselves or that indicate that either of those persons desires the words to be heard or listened to only by themselves and by some other person. A private conversation does not include words spoken by one person to another person in circumstances in with either of those persons ought reasonably to expect the words may be overheard, recorded, monitored or listened to by some other person, not being a person who has the consent, express or implied, of either of those persons to do so.

When is it an offence to use a listening device

It is an offence for a person to use a listening device to overhear, record, monitor or listen to a private conversation.

Maximum penalty: two years imprisonment or a fine of 40 penalty units.

However, there are wide exceptions that apply to this offence. See 'When can a listening device be used'.

When can a listening device be used

A 'party to a private conversation' may use a listening device to overhear, record, monitor or listen to a private conversation.

A party to a private conversation is:

- a person by or to whom words are spoken in the course of a private conversation; or
- a person who, with the express or implied consent, of any of the persons by or to whom words are spoken in the course of a private conversation, overhears, records, monitors or listens to those words.

This is a wide definition, including persons by or to whom words are spoken ('principal parties') as well as any person who, with the express or implied consent, of any of the principal parties, overhears, records, monitors or listens to the private conversation.

Where can I find this information in the Act?

See sections 4, 42 and 43 of the Act.

2. Sharing of Private Conversations

Sharing of private conversations unlawfully listened to

It is an offence for a person to communicate or publish to any other person a private conversation, or a report of, or of the substance, meaning or purport of, a private conversation, that has come to his or her knowledge as a direct or indirect result of the use of a listening device – where the use of the listening device is an offence.

This is an indictable offence with a maximum penalty of two years imprisonment or a fine of 40 penalty units.

If a person has unlawfully listened to a private conversation, they may only share knowledge of that conversation to a party to the conversation or with the express or implied consent of a party to the conversation.

A person may also share knowledge of a private conversation if that knowledge was not obtained through the unlawful use of a listening device (eg, a party to the private conversation told the person what was discussed).

Sharing of private conversations by parties to that conversation

It is an offence for a person who, having been a party to a private conversation and having used a listening device to overhear, record, monitor or listen to that conversation, to subsequently communicate or publish to any other person any record of the conversation made, directly or indirectly, by the use of the listening device, or any statement prepared from such a record.

This is an indictable offence with a maximum penalty of two years imprisonment or a fine of 40 penalty units.

Therefore, a party to a private conversation (whether a principal party or not) who uses a listening device to overhear, record, monitor or listen to the conversation may not communicate or publish a record or statement of the conversation made from the use of the listening device.

However, there is no bar to a party to a private conversation later telling another person (who is not a party to the private conversation) what was discussed in the private conversation as long as there was no use of a listening device. Note that other laws might apply in such a situation eg, breach of confidence.

The most relevant exceptions to this offence are as follows:

A party to a private conversation may share that conversation if the communication or publication:

- is made to another party to the private conversation
- is made with the express or implied consent of all other parties to the private conversation by or to whom words are spoken (principal parties)
- is in the public interest
- is not more than reasonably necessary for the protection of the lawful interests of that person

Note: Public interest is not defined in the legislation.

Lastly, a party to a private conversation ('person A') may share the conversation if the communication or publication is made to a person ('person B') who has, or person A believes has, on reasonable grounds, such an interest in the private conversation as to make the communication or publication reasonable under the circumstances in which it is made.

Where can I find this information in the Act?

See sections 44 and 45 of the Act.

LEGAL ADVICE – At any stage, it is important for a person to obtain legal advice about their situation and the options available to them. Please see the legal services directory in the support page of www.smartsafe.org.au for referrals to the nearest legal service.