



Can I record my former spouse or my children?



It is illegal to record any person – either by audio or with a camera.

Many people think that recording their interactions with their former spouse, or their children, makes for great evidence in Court, but this is simply untrue.

In Western Australia, section 5 of the [Surveillance Devices Act 1998 \(WA\)](#) prohibits a person from installing, using, maintaining, or causing to be installed, used or maintained a listening device to:

- Record, monitor or listen to a private conversation to which that person is not a party; or
- To record a conversation to which that person is not a party.

A mobile telephone is considered to be a “listening device”.

Section 6 of the [Surveillance Devices Act 1998 \(WA\)](#) prohibits a person from installing, using, maintaining, or causing to be installed, used or maintained an optical surveillance device to:

- Record visually or observe a private activity to which that person is not a party; or

- To record visually a private activity to which that person is a party.

A mobile telephone is also considered to be an “optical surveillance device”.

In accordance with subsections 5(3)(c) and 6(3)(a) of the Surveillance Devices Act 1998 (WA), it is not an offence to use a listening device or optical surveillance device to record conversations with a person, if both parties provide their consent (expressly or impliedly) to the recording taking place.

Penalties for recording a person without their consent include a fine of up to \$5,000 fine or 12 months imprisonment, or both.

There are certain circumstances where recordings, whilst they may not have been obtained legally, can be used as evidence in Court proceedings. Please see our separate article, “Illegal Recordings and When They Can Be Used As Evidence.”

The above is not intended to be legal advice and is based on the law of Western Australia only. If you are not based in Western Australia, please contact a local [family law solicitor](#) to obtain the relevant advice.

If you need advice in relation to your family law matter, please contact us.