EVIDENCE OF TAPE RECORDINGS

By

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1. Introduction

A recent and most welcome development arising from the Fitzgerald inquiry into corruption in the Queensland police force has been the introduction of compulsory taping of confessions given to police by persons accused of serious crime. The September decision of a majority of the High Court in *Carr v. R*[1A] which requires warnings to jurors in certain circumstances about the danger of acting on unsigned "confessions" has in any event made this step almost obligatory. No doubt there will be specific provisions introduced into the Evidence Act in due course in relation to these tapes: at the time of writing the issue has just been dealt with and approved by Cabinet. A wider issue however concerns use in evidence of tape recordings made for purposes other than formal recording of confessions. From the Fitzgerald inquiry itself it has become apparent that a number of persons may be prosecuted on the strength of the tape recorded admissions obtained through electronic eavesdropping.

Since the advent fifty years or so ago of electronic recording and surveillance devices there have been numerous judicial decisions and legislative enactments concerning the admissibility in evidence of tape recordings, not all of them consistent with one another. Despite this activity the issue of tape recordings as evidence is one which has scarcely been touched upon by the text book writers. The purpose of this article is to critically examine the present law in this area. In relation to tape recordings generally, consideration will be given to their nature as evidence, conditions as to admissibility of their content (including admissibility of copy tapes and oral evidence of content) and admissibility of transcripts and translations of tape recordings. In relation to telephone interceptions the effect of recent amendments to the Telecommunications (Interception) Act 1979 (Cth) will be examined. In relation to other recorded conversations the provisions of the Invasion of Privacy Act 1971 (Qld) will be examined. It may be noted that other States of Australia have provisions similar to those in the latter act.[1B]

2. The Evidential Nature of Tape Recordings

It is now well established that tape recordings are admissible to provide primary evidence of the conversation or sounds recorded on the tape.[1]

Some questions arise, however, as to the precise nature of this evidence. Substantial authority exists that, for purposes of admissibility, a tape recording is to be treated not as a document but as a physical object.[2] This view is supported by the joint majority

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1A. Unreported

1B. e.g. Listening Devices Act 1969 (NSW)

1. *Butera* v. *DPP* (1988) 62 ALJR 7
   R v. *Maqsud Ali* [1966] 1 QB 688
   R v. *Beames* [1979] 1 A Crim R 239

2. *R* v. *Matthews & Ford* [1972] VR 3 per Gowans J
   R v. *Beames supra* n. 1
   R v. *Gaudion* [1979] V R 57

judgement of Mason CJ, Brennan and Deane JJ in the recent High Court case of *Butera* v. *DPP*.[3] It was there held that: "It is not the tape, it is the sounds produced by playing it over which is the evidence admitted to prove what is recorded. The tape is a part of the machinery by which that evidence is produced".[4]

With respect, in the opinion of the authors it would be more appropriate for the tape recording itself to be admissible evidence (as distinct from merely the sounds produced by its playing) on the same basis that a document is admissible. It can be argued that the sounds recorded on a tape are analagous to the words written on a document. It seems an artificial distinction to differentiate between the reading of a document and the hearing of a tape merely on the ground that before being heard a tape must go through the intermediate process of being played. In both cases the purpose of the exercise is to receive the words written or spoken rather than to view an item of real evidence in order to draw inferences from what is seen. In this regard it may be asked whether a tape recorder is so different from an overhead projector which would display a document.

The concept of treating tape recordings as documents is not new to the courts. Indeed, Dawson J in *Butera* appears to have proceeded on the basis that the tape recording in that case was a document. Justice Kilner Brown in *R* v. *Stevenson*[5] seems to have regarded tape recordings as documents for purposes of admissibility. In civil cases, tape recordings have been treated as documents for purposes of discovery.[6] Further, tape recordings have been specifically included within the definition of "document" in both the Commonwealth and Queensland Evidence Acts,[7] as well as the evidence statutes of other jurisdictions.

Whilst it may be thought that the precise evidential nature of a tape recording is of only academic concern, it is submitted that practically this is an important distinction. As will be seen, it is relevant for determining the basis of admissibility of other items such as transcripts of the tape.

3. Preconditions to Admissibility of Tape Recordings

It appears that three preconditions must be satisfied to render a tape recording admissible in evidence.

Firstly, the content of the tape must be shown to be relevant and otherwise admissible. It should be noted that a tape recording which may prima facie infringe an exclusionary rule of evidence such as the rule against hearsay may in fact be admissible by statutory provision due to the inclusion of tape recordings in the definition of 'document' in the Evidence Acts.[8] The documentary hearsay provisions in ss 92 and 93 of the Evidence Act 1977-1988 (Qld) may be particularly relevant.

Secondly, voices recorded must be properly identified, for example by testimony of witnesses. This requirement presumably applies to the identification of any recorded sound.

Thirdly, the provenance of the tape must be proved. There are strong indications by members of the High Court in *Butera* v. *DPP* [9] that the scope of this requirement is such

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3. *Supra* n. 1
4. *Ibid.* at 9-10
5. [1971] 1 WLR 1 See also *R* v. *Matthews & Ford* — *supra* n. 2 at 11
6. *Cassidy* v. *Engwirda Construction Co* [1967] QWN 16; *ANA* v. *The Commonwealth* (1975) 121 CLR 582 at 594; *Radio Ten Pty Ltd* v. *Brisbane Television Ltd* [1984] Qd R 113
7. S. 5 *Evidence Act* 1977 — 88 (Qld)
   S. 7A *Evidence Act* 1905 (Cth)
8. *Supra* n. 7
9. *Ibid.* at 9 — 10

that it is necessary to prove, as a condition of admissibility, that the tape is authentic and accurate and has not been tampered with.

In that case it was said: "...assuming the provenance of the tape is satisfactorily proved, no question of its credibility can arise...".[10] This infers that proof of provenance requires proof of authenticity of the tape, and is consistent with other decisions which require proof of "accuracy".[11]

With respect, in the opinion of the authors the third precondition should be limited in its scope. It is submitted that if the authenticity of the tape can be reasonably inferred and there is no evidence to suggest that it is fabricated then the tape should be admissible. It appears unreasonable to require a party seeking to tender a tape recording in evidence to adduce independent proof that it is accurate and has not been tampered with. It would seem more appropriate for the tribunal of fact, after hearing evidence as to authenticity adduced by all parties and listening to the tape, to consider the possibility of tampering on the question of the weight to be attached to the tape. Support for this view is provided by the judgement of Gowans J in *R* v. *Matthews & Ford*.[12] In that case, his Honour found no support for the proposition that tape recordings should be inadmissible even if there was a real possibility of tampering or lack of authenticity. His Honour held (adopting the reasoning adopted in *R* v. *Maqsud Ali*[13]) that such a possibility should be considered by the jury in determining weight. The authors would respectfully agree with his Honour.

Nevertheless, serious doubt as to the authenticity of a tape recording, or strong suspicion of tampering, may be sufficient grounds for the exercise of a judicial discretion to exclude tape recordings in criminal cases. The basis of this discretion is fairness to the accused,[14] and Gaudron J in *Butera* held that it may arise where a tape recording is either inaudible or unintelligible. For the discretion to be exercised, it must be shown that the probative value of the evidence would be slight and that the prejudicial effect that the accused would suffer were the evidence admitted would be substantial.[15] Generally, evidence provided by tape recordings would not be of slight probative value, especially if containing an admission by the accused. However, if a tape were of only slight probative value and there existed doubts as to its authenticity, it may be considered unduly prejudicial to the accused if admitted because a jury may give greater weight to recorded sounds in much the same way as might occur with a document.

4. Admissibility of Copy Tapes

The High Court in *Butera* v. *DPP*[16] has stated quite unequivocally that the "best evidence" rule can have no application so as to preclude admissibility of evidence derived from tapes mechanically or electronically copied from an original tape.

This rule, in its original form, required that "the best evidence must be given which the nature of the case permits".[17] It operated to render admissible secondary evidence only where the absence of primary evidence was satisfactorily accounted for and excused. The operation of this rule has been restricted in modern times and authority exists now that the rule cannot

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10. *Ibid.* at 9 per Mason CJ, Brennan and Deane JJ
11. *R* v. *Maqsud Ali supra* n. 1 at 701
    R v. *Nilson* [1968] V R 238 at 241
12. *Supra* n. 2 at 14
13. *Supra* n.1
14. *Noor Mohammed* v. *R* [1949] AC 182
    Hasler [1987] 1 Qd R 239
15. *Supra* n. 15
16. *Supra* n.1. per Mason CJ, Brennan & Deane JJ at 10 and Dawson J at 13
17. *Omychund* v. *Barker* [1844] 1 Atk 21 at 49

apply to physical objects,[18] but "is limited and confined to written documents in the strict sense of the term and has no relevance to tapes or films".[19]

It is submitted therefore that copy tapes are admissible without evidence being adduced to explain the absence of the original. The exact evidential nature of a copy tape will depend upon the correct view of the evidential nature of original tape recordings. If, as stated by Mason CJ, Brennan and Deane JJ in *Butera*,[20] the proper view is that a tape by itself is not admissible evidence, but that it is the sounds produced by its playing which are admissibile, then only the sounds produced by a copy tape, and not the copy tape itself, will be admissible. However, if a tape recording is to be regarded as a document,[21] then the copy tape itself will be secondary evidence of that document.[22] If the latter view be correct then in the submission of the authors the copy tape should not be excluded under any new adaptation of the best evidence rule. Copies of tape recordings should be classed as prima facie admissible notwithstanding the availablity of the original tape but subject to the same preconditions of admissibility as apply to the original tape.

Admissibility of copy tapes has in fact been qualified to some extent. Mason CJ, Brennan and Deane JJ in *Butera* required as a condition of admissibility of a copy tape that "the provenance of the original tape, the accuracy of the copying process and the provenance of the copy tape are satisfactorily proved".[23]

As matters now stand it would be prudent before tendering a copy tape to provide some explanation as to the absence of the original. Dawson J in *Butera* stated that failure to produce the original tape or to satisfactorily explain its absence "may impugn the evidence given of the tape's contents, and provoke, at least, adverse comment".[24]

5. Admissibility of Oral Evidence of the Content of Tape Recordings

It appears that oral testimony will not be admissible to provide secondary evidence of the content of a tape recording unless neither the original nor any copy of the tape is available to be heard.[25] The majority in *Butera* held that the "best evidence" rule should apply to such oral evidence, and that testimony as to the content of a tape should only be admissible "if the tape is not available and its absence has been accounted for satisfactorily".[26]

At first glance it is difficult to reconcile this position with the finding by their Honours discussed earlier in this article, that the 'best evidence' rule has no application to tapes copied from an original.[27] The traditional view has always been that there is no distinction between classes of secondary evidence. On closer examination however it becomes clear that the danger of inaccurate reproduction of a copy tape from the original is negligible, whereas the danger of inaccurate testimony from memory of the content of a tape is considerable. Seen in that way, application of the best evidence rule to oral testimony but not to copy tapes is, with respect, logical and prudent.

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18. per Dixon CJ in *Commissioner for Railways (NSW)* v. *Young* [1962] 106 CLR 535 at 554
19. per Ackner LJ in *Kajala* v. *Noble* [1982] 75 Cr App R 149 at 152. See also per Gowans J in *R* v. *Matthews & Ford* - *supra* n. 2 at 13
20. *Butera* v. *DPP* - *supra* n. 1 at 9 — 10
21. As inferred by Dawson J in *Butera* v. *DPP* — *supra* n. 1 at 13
22. It may be inferred from the judgement of Dawson J in *Butera* v. *DPP supra* n. 1 that his Honour would treat a copy tape as secondary evidence — see at 13-14
23. *Supra* n.1 at 10
24. *Ibid.* at 13.
25. *Butera* v. *DPP supra* n. 1 at 9 per Mason CJ, Brennan and Deane JJ
26. *Ibid.*
27. *Butera* v. *DPP* - *supra* n. 1 at 10

It may be noted that *Butera* is cited as authority for the proposition that where oral evidence of content is admissible, the rule against hearsay is not offended. It was stated by Mason CJ, Brennan and Deane JJ that "[The oral] evidence is not open to the same objection as the evidence of a witness who repeats what he was told out of court by another person who is not called as a witness. In the latter case, the credibility of the other person cannot be tested: in the former case, assuming the provenance of the tape is satisfactorily proved, no question of credibility can arise".[28] It is submitted by the authors however that, if the purpose of the testimony extends beyond merely proving that recorded sounds of conversation were heard by the witness, that is to proving the truth of any assertions made on the tape, the hearsay rule will be infringed and that evidence will not be admissible.

6. Admissibility of Transcripts and Written Translations of Tape Recordings

A divergence of opinion previously existed as to the admissibility of transcripts of tape recordings.[29] It now appears from the decision in *Butera* v. *DPP*[30] that transcripts may be received by a court but only in certain circumstances.

It seems that there can normally be no justification for allowing a transcript in evidence as well as the tape itself where the tape is short, audible and intelligible.[31] That is on the basis that "if an audible and intelligible tape recording is in evidence, extrinsic evidence of its contents is superflous, lacks probative value and can contribute nothing (save possible confusion) to the determination of the matters in issue".[32] However, when the tape records a conversation which is inaudible or unintelligible to the ordinary listener, this may justify the admission of a transcript, or where the tape is unintelligible because it is in a foreign language, a written translation.

The High Court stressed in *Butera* that a person who translates a tape recording which is in a foreign language must give evidence of that translation under oath and must be subject to cross examination.[33] This requirement would also seem to apply to evidence given by a person (perhaps an expert) as to what is properly to be heard on a tape which, although in English, is inaudible or unintelligible. It was held in *Butera* that evidence by way of transcript (and presumably also by way of written translation) is not a proper substitute for such oral evidence. The majority in that case said in their joint judgement that "... the practice of requiring witnesses to give their evidence orally should not be waived lightly, especially if there be a risk that writing will give undue weight to that evidence, to the disadvantage of an accused person."[34]

On the facts of *Butera* however, translations were held to be admissible. What justified departure from ordinary practice, and made it appropriate to admit the translations, was the very large amount of dialogue involved. It was held that "...it would have been all but impossible for the jury to appreciate the cross-examination...if the translations had not been reduced to writing".[35] It is interesting to note the view of Dawson J. that perhaps even where the tape is short and intelligible a transcript of it might be received "...as a matter of

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28. *Supra* n. 26
29. Transcripts of tape recordings were held to be admissible as evidence in *R* v. *Beames supra* n. 1 but not in *R* v. *Masqud Ali supra* n. 1
30. *Supra* n. 1
31. per Cooke J in *R* v. *Menzies* [1982] I NZLR 40 at 49 quoted in *Butera* v. *DPP supra* n. 1. per Mason CJ, Brennan & Deane JJ at 10, per Gaudron J at 18
32. *Butera* v. *DPP supra* n. 1 per Gaudron J at 19
33. *Supra* n. 1 per Mason CJ, Brennan & Deane JJ at 11 per Dawson J at 15
34. *Supra* n. 1 at 11
35. *Ibid.*

convenience...to provide a ready form of reference to the contents of the tape, and avoid the necessary playing and replaying of the tape".[36]

Admissibility of transcripts and written translations will still require oral evidence to be given first. Justice Dawson in *Butera* held that "...to be admissible, a transcript must be properly proved and this will require evidence to be given that it faithfully transcribes what is on the tape and, if it is a translation, that it properly translates the language used". Justice Gaudron stated a similar requirement.[38]

The court retains a discretion as to whether it will make a transcript or written translation available to a jury.[39] It was stated by Gaudron J that this discretion "...is circumscribed by conventional considerations of fairness. Thus, without being exhaustive, there is no discretion to make available a transcript if it would tend to unduly emphasise the evidence, or to accord to it a probative value which it does not possess".[40]

In the judgement of the majority in *Butera*, transcripts and translations do not provide independent evidence of the conversation or sounds recorded on the tape if the tape or a copy is already in evidence : they may be received merely as an aid to understanding the evidence tendered by the playing of the tape.[41] With respect, in the opinion of the authors a more appropriate approach is that of Dawson J. His Honour stated that a transcript or written translation constitutes "...evidence, albeit secondary evidence, of the contents of the tape and not merely an aide-memoire".[42] It seems that Gaudron J supported this view, holding that transcripts or written translations may be admissible as an 'exhibit'.[43] Irrespective of which is the proper approach to the evidentiary nature of transcripts and translations, it was held in *Butera* that a jury must be instructed that if a conflict arises and they are not satisfied that the document sets out what is heard on the tape, they should prefer what they have heard from the playing of the tape. With this there can be no argument.

7. **Admissibility of Tapes of Telephone Conversations**

Interception of communications passing over the telecommunications system and use of information gained by such an interception is governed by the Telecommunications (Interception) Act 1979 (Cth). It was held in *Miller* v. *Miller*[44] that this Act was intended to cover the field relating to the telecommunications system, thus to the extent of any inconsistency it renders invalid any State legislation such as the Invasion of Privacy Act 1971 (Qld) in so far as the latter might apply to telecommunications.

Section 7 (1) of the Telecommunications (Interception) Act 1979 (Cth) imposes a general prohibition against interception of a communication passing over the telecommunications system. "Interception" is defined by section six of the Act as "listening to or recording, by any means, such a communication in its passage over [the] telecommunications system without the knowledge of the person making the communication". This does not include "listening in" while on the same premises as a caller for example by a telephone extension.[45] "Communication" is defined in s. 5 to include conversations.

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36. *Ibid.* at 13
37. *Ibid.* at 15
38. *Ibid.* at 20
39. *Butera* v. *DPP supra* n. 1 per Mason CJ, Brennan & Deane JJ at 11
40. *Butera* v. *DPP supra* n. 1 per Gaudron J at 24
41. *Butera* v. *DPP supra* n. 1 at 13 — 14
42. *Ibid.*
43. *Ibid.* at 22
44. [1978] 141 CLR 269
45. s. 6 (2) Telecommunications (Interception) Act 1979 (C'th)

Certain limited exceptions to the general prohibition are provided, so that in these stated circumstances interception is lawful. For example an interception is not unlawful if it is made by an officer of the Telecommunications Commission in the course of his or her duties for or in connection with the installation of any line, apparatus or equipment [46]used or intended for use in connection with the telecommunications system,[47] or the identifying or tracing of any person who has contravened or is suspected of contravening a provision of the Act or its regulations or by-laws.[48] An interception is not unlawful if it occurs with the knowledge of the person speaking at the time.[48A] Thus a caller may record his or her end of the conversation but not any reply without consent.

A further important exception to s. 7 (1) occurs where an interception is obtained in pursuance of a warrant.[49] Pursuant to various provisions of the Act, warrants are directly available to ASIO, the National Crime Authority, the Federal Police and the Customs Service. It is outside the scope of this article to detail these provisions, however suffice it to say that any failure to comply with them will cause the interception to be unlawful, with the consequences set out below. At the time of writing amendments to the Act are being considered to give State police forces power to obtain warrants. The precise ambit and effect of these amendments has not yet been detailed. For the time being the situation persists that State police and other law enforcement officers must be declared as "agencies" under s. 34 of the Act and apply for an agency warrant pursuant to s. 39. Such warrants can be executed only by the Federal Police under the terms of s. 55. In all cases, a warrant can be obtained only from a judge of the Federal Court: in the case of "federal" warrants in terms of ss. 20A and 20B of the Act, in the case of agency warrants in terms of ss. 45 and 46.

Prior to recent amendments the Act provided only that subject to certain exceptions, a person could not divulge or communicate to another person, or make use of a record of, any information obtained by intercepting a communication passing over the telecommunications system. Five limited classes of 'proceeding' were detailed in which a person could give in evidence information obtained by interception.

It was decided by the High Court in *Hilton* v. *Wells*[50] that those provisions of the Act provided no basis for exclusion of evidence obtained in contravention of the Act, which thus remained admissible evidence despite the illegality of its gathering. It was held by Gibbs CJ, Wilson and Dawson JJ, in their joint judgement that the Act operated merely to prohibit, subject to limited exceptions, the interception of a communication passing over the telecommunications system and the communication by one person to another of information obtained by such interception and to declare *lawfully* intercepted evidence admissible in certain proceedings. Their Honours held that the Act did not deal generally with the admissibility of evidence in court and certainly did not deal specifically with the admissibility of unlawfully obtained evidence. According to Mason and Deane JJ, in their joint judgement:

> The general scheme of s. 7 requires both that ss. (4) and (5) be read as being concerned with controlling the use of information obtained by one or other of the acts or things contemplated and permitted by sub-section (2) and (3) and that sub-section (6) be so read that the information of which disclosure is authorised is limited to information

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46. Defined in s. 7 (3)
47. s. 7 (2) (a) (i)
48. s. 7 (2) (a) (ii)
48A. *R* v. *Padman* [1979] 25 A.L.R. 36
49. s. 7 (2) (b)
50. (1985) 59 ALJR 396 per Gibbs CJ, Wilson and Dawson JJ at 403 — 404 per Mason and Deane JJ at 408-409

> which has been lawfully obtained as distinct from information which, under the provisions of sub-section (1), (2) and (3) should not have been obtained at all.[51]

Amendments to the Telecommunications Interception Act in 1987 remedied this defect.[52] Now, s. 63 of the Act provides that no person shall in any proceeding give evidence obtained by intercepting telecommunications whether lawfully or in contravention of the Act. Sections 74, 75 and 76 provide certain limited exceptions to s. 63.

Under s. 74 , information which has been "lawfully obtained" under the Act may be given in evidence in certain 'exempt' proceedings. 'Exempt' proceedings are defined in section 6E and the term 'lawfully obtained' is also defined in section 5B. Section 75 states that information which has been technically unlawfully obtained due to a defect or irregularity, which is not a substantial defect or irregularity, in a warrant or its execution may be admissible in evidence. By virtue of s. 76, information unlawfully obtained may be given in evidence in certain proceedings for offences under the Act itself. Intercepted material whether obtained lawfully or unlawfully is not admissible in evidence in any proceeding except as provided in the above circumstances due to the specific prohibition in s. 77 of the Act.

Thus, to the limited extent that the Telecommunications (Interception) Act 1979 (Cth) permits, tape recordings of intercepted telephone conversations are admissible subject to the general considerations discussed above applying to this type of evidence.

8. **Admissibility of Recorded Conversations**

The Invasion of Privacy Act 1971 (Qld) and its equivalents in other States generally proscribe the recording of private conversations and render inadmissible any evidence obtained in contravention of their provisions. Taking the Queensland Act as a model, it will be seen that s. 43 and s. 46 together achieve this result. The term "private conversation" is defined at length in s. 4 to cover conversations which the parties intend be heard only by themselves or where appropriate by additional known listeners. The definition however specifically excludes circumstances where the parties ought reasonably to expect that their conversation may be recorded by some person without their consent.

Section 43 of the Queensland act prohibits the recording of any private conversation subject to two exceptions. These are:

(a) Where the recording is made by a party to the conversation, including a listener known to the parties.
(b) Where the recording is made by a member of the police force authorised in writing in pursuance of his duty, and with approval given by a judge of the Supreme Court. Other persons falling under this exception include customs officers authorised by warrant and any person employed in connection with the security of the Commonwealth acting pursuant to a Federal statute relating to that matter.[53]

In relation to the exemption covering the police. s. 43 sets out in sub-sections 3 and 4 the factors to be taken into account and the procedure to be followed in connection with an application for approval. It is not proposed to detail those provisions here. All officers falling under the second exception are prohibited by s. 43 from disclosing the substance of the lawfully recorded conversation otherwise than in the performance of their duty; this allows the giving of evidence in court. Under s. 43 and s. 44 criminal penalties apply to unlawful recording of private conversations and unlawful disclosure of the content of such conversations by means of such recordings.

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51. *Ibid.* at 408
52. Telecommunications (Interception) Amendment Act, 1987 (Cth)
53. Telecommunications (Interception) Act, 1979 (Cth) — s. 77

Section 46 of the Queensland act provides that evidence of a private conversation recorded in contravention of s. 43 is inadmissible in both civil and criminal proceedings. The provision applies to exclude not only the recording from evidence but also oral testimony of the conversation based on knowledge derived directly or indirectly from the recording. This is subject to three exceptions: where any party to the conversation consents to such evidence, where the witness is able to testify to the conversation independently of the illegal recording and in relation to proceedings for offences against the Act itself.

It will be seen from the above that only recordings of private conversations made in limited circumstances will be admissible in evidence in terms of the Invasion of Privacy Act 1971 (Qld). It should also be noted that other statutory provisions exist which apply to specific situations and which might render admissible recordings which contravene the general act. Of particular importance is the Drugs Misuse Act 1986 (Qld), which in s. 25 permits recording of private conversations in pursuance of "interception warrants" issued by judges of the Supreme Court where there are reasonable grounds for suspecting the commission of an offence against the act punishable by life imprisonment. Also worthy of mention is the Customs Act 1901, (Cth) which in s. 219B authorises Federal police engaged in drug enquiries to obtain warrants enabling them to record private conversations. Such a warrant can be obtained from a judge of the Federal Court or a State Supreme Court subject to the terms set out in s.219B. Under s. 219 F any recording may be used for the purposes there set out in addition to the drugs enquiry for which it was originally obtained.