

Recording Meetings: A Supreme Court Case

Introduction

A meeting of an owners corporation or strata committee cannot be recorded without the consent of those present at the meeting. This is because section 7 of the *Surveillance Devices Act 2007* prohibits a person using a listening device to record a private conversation and conversations at meetings that cannot be attended by members of the public involve private conversations.

But what happens when those present at a meeting know that the meeting is being recorded, do not object to the recording and allow the meeting to continue whilst it is being recorded? In those circumstances, do those who attend the meeting grant their implied consent to the meeting being recorded? A recent Supreme Court case helps provide the answer to that question.

Facts

Several people were having a conversation on a property. One of them used a mobile phone to take a video recording of the conversation. The recording of the conversation by use of the mobile phone was obvious. And one of the people involved in the conversation stated that it was being recorded and explained why. One of the parties to the conversation did not object to the recording and continued to converse with the others present. A minute or so later that person said "What's all this videoing shit?" whilst smiling and gesturing towards the camera as he continued to converse with the others. The person also raised his hand towards the camera at various times in order to placate the concerns of the others during a heated discussion about the removal of a power pole on their

property.

The Decision

A dispute between the parties to the conversation ended up in the Supreme Court. The person who was filmed objected to the video recording of the conversation being adduced in evidence. The Court had to decide whether the video of the conversation was taken with the implied consent of that person. The Court concluded that it was because that person had knowledge that the conversation was being recorded, he could see and was told that he was being filmed and he accepted that in order to continue to have the conversation with the others he would be filmed. At no point did the person object to being filmed as a condition of continuing the conversation. For these reasons, the Court permitted the video recording of the conversation to be admitted into evidence because it did not fall foul of the prohibition in section 7 of the *Surveillance Devices Act 2007*.

Conclusion

The case provides a salutary lesson for those who attend meetings of an owners corporation or strata committee that are being recorded. If those present know that the meeting is being recorded, do not object to the recording and continue with the meeting, then there is a good argument that they have impliedly consented to the recording of the meeting and cannot later object to the recording being used for any legitimate purpose including as evidence in litigation.

Case: *Brown v Etna Developments Pty Ltd* (Surveillance Devices)
[2025] NSWSC 218



Adrian Mueller I BCOM LLB FACCAL I Partner

Since 2002 Adrian has specialised almost exclusively in the area of strata law. His knowledge of, and experience in strata law is second to none. He is the youngest person to have been admitted as a Fellow of the ACSL, the peak body for strata lawyers in Australia. [Profile](#) I [Linked](#)

Contact Us

For all strata law advice including by-laws, building defects and levy collections contact our specialist NSW and Sydney strata lawyers [here](#) or call 02 9562 1266, we're happy to assist.