

Observations or Recordings in Breach of Privacy: s 227A(1) (Commencement date: 8 Dec 2005)

Legislation

227A Observations or recordings in breach of privacy

- (1) A person who observes or visually records another person, in circumstances where a reasonable adult would expect to be afforded privacy—
- (a) without the other person's consent; and
 - (b) when the other person—
 - (i) is in a private place; or
 - (ii) is engaging in a private act and the observation or visual recording is made for the purpose of observing or visually recording a private act;

commits a misdemeanour.

Maximum penalty—3 years imprisonment.

Examples of circumstances where a reasonable adult would expect to be afforded privacy—

- 1 A person changing in a communal change room at a swimming pool may expect to be observed by another person who is also changing in the room but may not expect to be visually recorded.
- 2 A person who needs help to dress or use a toilet may expect to be observed by the person giving the help but may not expect to be observed by another person.

...

- (3) In this section—

consent means consent freely and voluntarily given by a person with the cognitive capacity to give the consent.

genital or anal region, of a person, means the person's genital or anal region when it is bare or covered only by underwear.

Commentary

Meaning of 'observe' and 'visually record'

'Observe' means observe by any means: s 207A.

'Visually record' a person means record by any means, moving or still images of that person or part of the person: s 207A.

Meaning of 'consent'

'Consent' would appear to have its normal meaning of freely and voluntarily given by a person with the cognitive capacity to give consent. Under s 227A(1), consent does not have the meaning defined in s 348 in relation to Chapter 32.

Meaning of 'private place' and 'private act'

'Private place' means a place where a person might reasonably be expected to be engaging in a private act: s 207A.

'Private act', for a person, means –

1. showering or bathing; or
2. using a toilet; or
3. another activity when the person is in a state of undress; or
4. intimate sexual activity that is not ordinarily done in public: s 207A.

Meaning of 'state of undress'

'State of undress' for a person means the person is naked or the person's genital or anal region is bare or, if the person is female the person's breasts are bare; or

1. the person is wearing only underwear; or
2. the person is wearing only some outer garments so that some of the person's underwear is not covered by an outer garment: s 207A.

Defence

There is an excuse from criminal responsibility for law enforcement officers acting in the course of their duty and for persons acting in the course of duty with respect to persons in lawful custody or under a supervision order: s 227C.

Suggested Direction

The prosecution must prove that:

- 1. The defendant observed or visually recorded another person in circumstances where a reasonable adult would expect to be afforded privacy;**
- 2. The observation or visual recording was done without the other person's consent;**
- 3. The other person was in a private place or engaging in a private act and the observation or visual recording was made for the purpose of observing or visually recording a private act.**