

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

The prosecution must prove that:

- 1. The defendant observed¹ or visually recorded² 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**
- 3. The other person was in a private place⁴ or engaging in a private act⁵ and the observation or visual recording was made for the purpose of observing or visually recording a private act.**

Note: s 227C provides for 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.

¹ Observe means observe by any means (s 207A).

² Visually record a person means record by any means, moving or still images of that person or part of the person (s 207A).

³ Consent would appear to have its normal meaning and not that defined in s348 in relation to Chapter 32.

⁴ Private place means a place where a person might reasonably be expected to be engaging in a private act (s 207A).

⁵ Private act, for a person, means –

- (a) showering or bathing; or
- (b) using a toilet; or
- (c) another activity when the person is in a state of undress; or
- (d) intimate sexual activity that is not ordinarily done in public (s 207A).

“State of undress” for a person means –

- (a) 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
- (b) the person is wearing only underwear; or
- (c) 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).