

Distributing prohibited visual recordings: s 227B (Commencement date: 8 Dec 2005)

Legislation

227B Distributing prohibited visual recordings

- (1) A person who distributes a prohibited visual recording of another person having reason to believe it to be a prohibited visual recording, without the other person's consent, commits a misdemeanour.

Maximum penalty—3 years imprisonment.

- (2) In this section—

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

207A Definitions for this chapter

distribute includes—

- (a) communicate, exhibit, send, supply or transmit to someone, whether to a particular person or not; and
- (b) make available for access by someone, whether by a particular person or not; and
- (c) enter into an agreement or arrangement to do something in paragraph (a) or (b); and
- (d) attempt to distribute.

prohibited visual recording, of a person, means—

- (a) a visual recording of the person, in a private place or engaging in a private act, made in circumstances where a reasonable adult would expect to be afforded privacy; or
- (b) a visual recording of the person's genital or anal region, when it is bare or covered only by underwear, made in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region.

Commentary

Meaning of 'prohibited visual recording'

The definitions of 'visually record', 'private place' and 'private act' in s 207A are required to understand the definition of 'prohibited visual recording'.

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

'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.

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.

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 distributed a prohibited visual recording of another person;**
- 2. The defendant had reason to believe that it was a prohibited visual recording;**
- 3. The distribution occurred without the other person's consent.**