

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

The prosecution must prove that:

- 1. The defendant distributed¹ a prohibited visual recording of another person;²**
- 2. The defendant had reason to believe that it was a prohibited visual recording;**
- 3. The distribution occurred without the other person's consent.³**

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 Distribute includes –

- (a) communicate, exhibit, send, supply, transmit to someone, whether 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 (s 227B(2)).

² Prohibited visual recording of another 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 covered by underwear or bare made in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region (s 227B(2)).

For definitions of “visually record”, “private place” and “private act”, see s 207A.

³ Consent would appear to have its normal meaning and not that defined in s 348 in relation to Chapter 32.