

## Observations or Recordings in Breach of Privacy: s 227A(2) (Commencement date: 8 Dec 2005)

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### Legislation

#### 227A Observations or recordings in breach of privacy

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- (2) A person who observes or visually records another person's genital or anal region, in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region—
- (a) without the other person's consent; and
  - (b) when the observation or visual recording is made for the purpose of observing or visually recording the other person's genital or anal region;

commits a misdemeanour.

Maximum penalty—3 years imprisonment.

*Example for subsection (2)—*

using a mobile phone in a public place to take photos of women's underwear under their skirts without their consent

- (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 the person or part of the person: s 207A.

#### *Meaning of 'genital or anal region';*

'Genital or anal region' of a person means the person's genital or anal region when the region is covered by underwear or bare: s 227A(3).

### *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(2), 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 observed or visually recorded another person's genital or anal region where a reasonable adult would expect to be afforded privacy in relation to that region;**
- 2. The observation or visual recording was done without the other person's consent;**
- 3. The observation or visual recording was made for the purpose of observing or visually recording the other person's genital or anal region.**