

Andrew Parry <amp@kings.edu.au>

8/22/2013 5:44 PM

to Rob Patterson
cc Greg James, Rob Chandler, Timothy Hawkes

Re: Incident

Dear Rob,

Thank you very much for this. I shall be I touch and this information is very helpful for us to arrive at an appropriate judgement on the boys actions.

I greatly appreciate your ongoing support.

Best wishes

Andrew

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On 22/08/2013, at 4:28 PM, "Robert A Paterson <pate2rob@police.nsw.gov.au>" <pate2rob@police.nsw.gov.au> wrote:

Dr Parry,

→ an offence

In relation to the actual offence, there is little doubt that there has been an offence from the information that you have supplied. The offence would most likely fall under an **Assault with Act of Indeceny**. Proof of indecent intent is not required, however some form of physical evidence or witness statement would be necessary. In terms of the Young Person 'pretending' that the act took place and using condensed milk to substitute for the perception that semen was ejaculated, it is irrelevant, as the victims believed that the act took place. Acts of indeceny are acts which a "right minded person would consider to be contrary to community standards of decency". If the act has clear sexual connotations, the police do not have to prove the purpose of providing sexual gratification or the purpose of the indecent act. Indeceny is that which offends against currently accepted standards of decency.

The elements of the offence are as follows:

The basic offence is created by s 61L of the *Crimes Act 1900*, which provides:

"Any person who assaults another person and, at the time of, or immediately before or after, the assault, commits an act of indecency on or in the presence of the other person, is liable to imprisonment for 5 years."

The essential ingredients or facts that the Crown has to prove are:

1. that [*the accused*] assaulted [*the complainant*],
2. that the assault was indecent,
[*if applicable* or that immediately before or immediately after that assault [*the accused*] committed an act of indecency on/in the presence of [*the complainant*]]
3. that the assault was without the consent of [*the complainant*],
4. that [*the accused*] knew that [*the complainant*] was not consenting,

[*if recklessness as to consent is an issue omit 4 above and substitute with:*

that [*the accused*] knew that [*the complainant*] was not consenting, or [*he/she*] realised that there was a possibility that [*the complainant*] was not consenting but [*he/she*] went ahead anyway, or [*he/she*] did not even think about whether [*the complainant*] was consenting or not — in other words, [*he/she*] did not care whether [*the complainant*] was consenting].

or perhaps the following-

CRIMES ACT 1900 - SECT 60

Act of indecency without consent

(1) A person who commits an act of indecency on, or in the presence of, another person without the consent of that person and who is reckless as to whether that other person consents to the committing of the act of indecency is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

The incident/s should be reported to police so that the exact offence can be determined, and the victim(s) can be contacted for statements if willing. I assume that the victims have been counselled in relation to the matter. If you would like police to attend, I can speak with the Supervisor on duty so that it is followed up as discussed. A minor assault should be reported to police, so this should be reported (to avoid any possible action under S316 of the Crimes Act under Conceal Serious Indictable Offence, and potentially avoid civil action. The Young Person **may** be eligible to be dealt with under the *Young Offenders' Act* (1997) and if this is the case, a Youth Justice Conference may be the result. Please call my mobile if required on 0409 574 411. I hope this assists.

Kind Regards,

Rob PATERSON
Senior Constable
Youth Liaison Officer
The Hills Local Area Command
ph: 9680 5399
<http://www.facebook.com/TheHillsLAC>

Further information-

INDECENT ASSAULTS AND ACTS OF INDECENCY - DETERMINING THE
CORRECT OFFENCE.

It has come to my attention, as a result of having received numerous requests for advice in the course of investigations into alleged paedophile activity, that much confusion reigns among investigators as to the appropriate circumstances with which to proceed for the various offences created by ss 61L, 61N & 61O of the Crimes Act 1900.

The following case law is of particular relevance:

In *R v Orsos* (1997) 95 A Crim R 457, an extract from which appears in the Police Prosecutors Digest Vol.3, Issue 2, pp.37-38 (available from the OLS office), the New South Wales Court of Criminal Appeal considered the difference between 'with' and 'towards' in an indictment for a charge pursuant to s 61N(1).

Grove J, with whom Priestley JA concurred, held at [460]:

"To commit an act of indecency "with" a person involves two participants whereas logically and grammatically one person may commit an act of indecency "towards" another."

One finds in the judgment of Hulme J a most useful historical dissertation of the rationale for the introduction of s 61N and its predecessors, which, as recorded in the judgment of McHugh J in *Saraswati* (1991) 172 CLR 1, was to address the