

Vault

Attachment 1

Page 1 of 7

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22/08/2013 5:44 PM

[Show Details](#)**Subject:** Re: Incident**From:** amp@kings.edu.au**To:** robert a paterson/41126/staff/nswpolice@nswpolice

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

Dr Andrew Parry  
PhD, MPhil (Cantab), MEd (Syd), BEd (ACU).

Deputy Headmaster  
The King's School  
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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,

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 Indecency. 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 indecency 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. Indecency 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,

Vault

Page 2 of 7

[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:

Vault

Page 3 of 7

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 problems identified in *Fairclough v Whipp* (1951) 35 Cr App R 138 and *DPP v Rogers* (1953) 1 WLR 1017 that a person could not be convicted of indecent assault by merely inducing a child to voluntarily touch the accused's penis by creating the offence of Incite person to Commit Act of Indecency With-. An examination of the judgment of McHugh J in *Saraswati* also reveals that the rationale for the 'second leg' of s 61N(1) (ie, Incite person to Commit Act of Indecency Towards-) is to create an offence where no such offence previously existed in respect of an accused who incites a child to self-masturbation.

The availability of a number of similar offences in respect of assaults of a sexual nature upon children is bound to create confusion. Both the above Australian cases - *Orsos* and *Saraswati* - provide some useful guidance as to the appropriate offence upon which to proceed in such circumstances. Copies of both cases are available from Legal Services, Crime Agencies, on request.

I wish to take this opportunity, if I may, to set down some general guidelines as to the appropriate circumstances with which to proceed against an accused for certain particular offences. I

wish to emphasise that the following guidelines do not represent an exhaustive list of the available offences and the circumstances which I have cited that give rise to particular offences are by no means the only circumstances for which the stated offences will have been committed. I have merely cited those circumstances which I have found, in my experience, to be among the most common encountered by investigators. In particular, they illustrate the practical distinction between:

- Indecent Assault (s 61L)
- Commit Act of Indecency Towards (ss 61N & 61O)
- Incite to Commit Act of Indecency With-(ss 61N & 61O), and
- Incite to Commit Act of Indecency Towards (ss 61N & 61O).
- A person who touches another person's genitals commits the offence of Indecent Assault (s 61L). Consent of the victim is no defence if the victim is under the age of 16 years (s 77(1)). A more serious offence is committed if the offence is committed in circumstances of aggravation (see s 61M).
- A person who causes another person to involuntarily touch the first person's genitals (eg, A takes hold of B's hand and places it on A's penis) commits the offence of Indecent Assault (s 61L). Consent of the victim is no defence if the victim is under the age of 16 years (s 77(1)). A more serious offence is committed if the offence is committed in circumstances of aggravation (see s 61M).
- A person who incites another person under the age of 16 years to touch the first person's genitals (ie, the defendant incites the victim to voluntarily touch the defendant's penis) commits the offence of Incite Person Under the Age of 16 Years to Commit Act of Indecency With- (s 61N(1)). Consent of the victim is no defence (s 77(1)). A more serious offence is committed if the offence is committed in circumstances of aggravation (see s 61O(1)).
- A person who incites another person of or above the age of 16 years to touch the first person's genitals (ie, the defendant

incites the victim to voluntarily touch the defendant's penis)  
commits the offence of Incite Person of or above the Age of 16  
Years to Commit Act of Indecency With- (s 61N(2)). Consent of the  
victim is a defence. A more serious offence is committed if the  
offence is committed in circumstances of aggravation (see s  
61O(1A)).

— A person who incites another person under the age of 10 years to  
touch the first person's genitals (ie, the defendant incites the  
victim to voluntarily touch the defendant's penis) commits the  
offence of Incite Person Under the Age of 10 Years to Commit Act  
of Indecency With- (s 61O(2)). Consent of the victim is no  
defence (s 77(1)).

— A person who incites another person under the age of 16 years to  
self-masturbation in the first person's presence commits the  
offence of Incite Person Under the Age of 16 Years to Commit Act  
of Indecency Towards- (s 61N(1)). Consent of the victim is no  
defence (s 77(1)). A more serious offence is committed if the  
offence is committed in circumstances of aggravation (see s  
61O(1)).

— A person who incites another person of or above the age of 16  
years to self-masturbation in the first person's presence commits  
the offence of Incite Person of or above the Age of 16 Years to  
Commit Act of Indecency Towards- (s 61N(2)). Consent of the  
victim is a defence. A more serious offence is committed if the  
offence is committed in circumstances of aggravation (see s  
61O(1A)).

— A person who masturbates in view of a person under the age of 16  
years, knowing the child is watching and deriving stimulation from  
the fact, commits the offence of Commit Act of Indecency Towards a  
Person Under the Age of 16 Years (s 61N(1)). (See also Francis  
(1988) 88 Cr App R 127). Consent of the victim is no defence (s  
77(1)). A more serious offence is committed if the offence is

Vault

Page 6 of 7

committed in circumstances of aggravation (see s 61O(1)).

— A person who masturbates in view of a person under the age of 10 years, knowing the child is watching and deriving stimulation from the fact, commits the offence of Commit Act of Indecency Towards a Person Under the Age of 10 Years (s 61O(2)). Consent of the victim is no defence (s 77(1)).

— A person who masturbates in view of a person of or above the age of 16 years, knowing the child is watching and deriving stimulation from the fact, commits the offence of Commit Act of Indecency Towards a Person of or above the Age of 16 Years (s 61N(1)). Consent of the victim is a defence (s 77(1)). A more serious offence is committed if the offence is committed in circumstances of aggravation (see s 61O(1A)).

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Vault

Page 7 of 7

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