

From: Robert A Paterson/41126/Staff/NSWPolice
To: Matthew Munro/34117/Staff/NSWPolice@NSWPolice

Date: Monday, September 15, 2014 06:45AM
Subject: Re: Fw: Incident

History: ✦ This message has been replied to.

Hi Sgt,

Dr Parry rang me asking if there was any offence. I told him there was (and used examples below to explain), to report it and that I could organise that through a car crew (as stated in email) or it could be reported at the police station. Dr Parry was seeking advice, and I explained I could not provide legal advice (merely what the offence could have been), and he should report it and seek further advice.

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>

-----Matthew Munro/34117/Staff/NSWPolice wrote: -----

To: Robert A Paterson/41126/Staff/NSWPolice@NSWPolice
From: Matthew Munro/34117/Staff/NSWPolice
Date: 15/09/2014 06:25AM
Subject: Re: Fw: Incident

Thanks Robert. Can you recall whether he sent you an email posing his question, or whether it was a telephone conversation? If it was a telephone conversation, can you recall to the best of your memory what was said? I am chasing this matter up now. It was never reported. The victim left the school. The offender was expelled. Clearly something happened for the school to take such drastic action. I am meeting with the Headmaster of this school today, so if you can fill me in on what happened when Andrew Parry made contact with you before then I can speak with him about it too.

Thanks,

Matthew MUNRO
Detective Sergeant
Child Abuse Squad, Parramatta
Level 8, 111 Phillips Street Parramatta
Ph: 88312627 Fax: 88312699
Mobile: REDACTED

-----Robert A Paterson/41126/Staff/NSWPolice wrote: -----

To: Matthew Munro/34117/Staff/NSWPolice@NSWPolice
From: Robert A Paterson/41126/Staff/NSWPolice
Date: 11/09/2014 01:59PM
Subject: Fw: Incident

Hi Matthew,

I have forwarded the email that I provided to assist Dr Parry at The Kings School on 22/8/13. Near the end of the email I advised to report this specific matter, and any others.

Kind regards,

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

-----Forwarded by Robert A Paterson/41126/Staff/NSWPolice on 11/09/2014 01:55PM -----

To: "Andrew Parry" <amp@kings.edu.au>
From: Robert A Paterson/41126/Staff/NSWPolice
Date: 22/08/2013 04:27PM
Cc: rgc@kings.edu.au
Subject: Incident

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,

[*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

REDACTED. 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 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 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)).

