



## VICTORIA POLICE

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Officer in Charge  
 Epping Sexual Offences and Child Abuse Unit

**Subject:** CDJ [REDACTED] (REDACTED 1979), Accused re Sexual Penetration and Indecent Act matters. Report and recommendations.

1. Attached to this report is a brief of evidence relating to accused suspect CDJ [REDACTED] (REDACTED 1979) currently of [REDACTED] North Ballarat.
2. The brief relates to outcomes of an investigation conducted by Senior Constable JARSKI in response to allegations made on behalf of (now) 24 year old victim CDL [REDACTED] by his parents. CDL [REDACTED] is a full time resident of DHS sponsored housing and care due to autism, intellectual disabilities and Tourette syndrome among other matters which affect his cognitive functioning. The investigation relates to alleged indecent assaults by CDJ [REDACTED] on CDL [REDACTED] sometime during the period between July 1998 and March 1999 when the accused was employed by DHS as an occasional carer for the victim. The reporters initially complained about this matter close to the time period of the alleged incident(s), and a police investigation was commenced but effectively 'put on hold' due to the victims' personal condition at the time. (See attached material).
3. An attached comprehensive report submitted by Senior Constable JARSKI contains all the appropriate details of the alleged offences and is self explanatory. The report also outlines the cognitive and verbal limitations of the victim which plays its part in the assessment of this matter. Senior Constable JARSKI has requested 'non-authorisation' of the potential charges of '*Sexual penetration – Child under 16 years/Care and Supervision*' and '*Indecent Act in the presence of a Child under 16 years*' contained within the brief.
4. I have perused the available information regarding this matter very carefully, including re-viewing the assertions, victim family members statements, other associated persons statements, previous police investigation notes and other

information. It should be noted that there is no formal victim statement, the victim being deemed by police as not suitable to provide a written or VATE statement at the time of original report. There are also police notes of initial conversations with the victim. I have closely considered the thrust of the suspect's Record of Interview. Other information is peripheral, with no suggestion of any person actually witnessing any of the alleged incidents. Signed statements available refer to 'Recent' or 'First Complaint' only

5. In further reviewing the available information, I have carefully considered the method, possible reasons and subsequently the veracity of the subject's allegation. It is apparent that the victim has been very consistent in raising this matter over an extended period of time and this has been constantly reported by the victims' parents in many forms to various agencies including police. Whilst an allegation is essentially made, and there is information available that possibly supports that the accused and victim were in close contact during the time of the matters alleged, there is no tangible evidence to confirm this incident as an offence without victim input. I submit that no proper detailed disclosure severely limits investigative approaches and the verbal allegations under the circumstances are basically un-assessable
6. There are also a number of matters to contemplate when considering the complaint in relation to judicial procedure. Some of these matters are discussed within Senior Constable JARSKI'S report. I also have serious concerns regarding the competency of the victim during any possible Court adjudication. Whilst not able to medically comment on any condition or impediment suffered by the victim apart from what has been reported, for police requirements and judicial purposes, the victim was deemed by experienced SOCAU members to be not able to adequately provide a VATE or written statement. Medical and psychological professionals opinions outlined within the attached material also seriously question the victims' ability to be appropriately involved in the judicial process. I therefore suggest that the victim would be unable to adequately meet the requirements of section 23 – Evidence Act to understand the Oath, or alternately of the duty of speaking the truth and rationally responding to questions about the 'facts in issue'. The victim is clearly living under care due to a number of matters including intellectual impairment, and if this causes possibilities that the victim would be deemed 'not competent' to give evidence, there may be little other available information on which to meet the prosecution standard of beyond reasonable doubt. If the victim was deemed 'not competent' to give evidence, there is little other available information on which to meet the prosecution standard of beyond reasonable doubt.
7. There is also substantial information contained within the attached material that outlines some of the victims' personal behaviours at the time of the alleged incidents. Some of this information alludes to behavioural matters where the victim is very protective of his personal space and was apparently very reluctant to allow any person to touch him in any manner; this includes people very close to him like parents and carers. Available (admittedly interpreted) information regarding these possible incidents seem to suggest that the accused was able to not only get close enough to the victim to physically touch him, but to also allegedly conduct intimate sexual acts upon him. This would certainly seem to be contrary to the victims' reported acceptance of any touching of him at the time, with some carers indicating incredulous disbelief at

the possibility of that occurring without the accused being severely physically rebuffed by the victim.

8. Having said that however, a complaint *has* been made and an assessment of the available information is necessary. If we hypothetically accept the complaint as made, what supports it? As discussed above, there are some areas of concern with the matter so supporting information is required. There is little of that however, and without appropriate corroboration, this is essentially a complaint versus denials, which makes it highly subjective in the best of circumstances. Relevant questions when considering prosecution are: Is the evidence sufficient to justify continuation of a prosecution? Is the evidence substantial, reliable and admissible? Is there a reasonable chance of a conviction being secured? What is the seriousness of the offence? Is there a need for deterrence? Is it in the public interest to pursue a prosecution? I submit that at this stage, the general answers to these questions are no...
9. Following that, suspect assessment is also required when considering prosecution. Age, intelligence, physical and mental health and whether the consequences of any resulting conviction would be unduly harsh or oppressive. Although the suspect has no history of sexual or other offending, it does not necessarily follow that similar complaints' alleging sexual assault should proceed unchecked, however as the suspect is currently employed in similar tasking, any move to prosecution would probably carry the extra burden of employment loss in the first instance.
10. However, as stated, I have taken note of all of that information when considering this matter, and I proffer the following – this is a tenuous allegation made through third parties which is uncorroborated or otherwise supported, and strenuously denied by the suspect, so therefore does not lead to any degree of confidence for a successful prosecution. I submit that the available evidence and process would not sustain any potential charge.
11. I therefore concur with Senior Constable JARSKIS' evaluation of the situation and in light of the above and without other information, the available assertion evidence cannot sustain any potential charge. I therefore recommend that the charge of Sexual Penetration Child under 16 Care/Authority and Indecent Act in the Presence of a Child under 16 years considered against CDJ be marked NOT AUTHORISED - insufficient evidence, no likely chance of successful prosecution.
12. For information, attention and assessment, Officer in Charge Epping SOCAU.

REDACTED

Glen WILSON  
**Sergeant 25209**