

Sydney Magistrate on Trial for Allegedly Sexually Abusing Teenage Boy

68-year old Sydney Magistrate Graeme Curran is [currently on trial in Downing Centre District Court](#) for nine counts of [indecent assault](#), arising from [allegations he sexually abused a teenage boy nearly four decades ago](#).

In his opening statement to the jury, Crown Prosecutor Mark Hobart SC submitted that between 1981 and 1983, Mr Curran performed a number of sexual acts upon the boy, who was aged 13 to 15 at the time.

These acts, it is alleged, included performing a 'ritual' of running his hands up and down the boy's body with 'extra time' on the genital area while the pair were in bed naked together, attempting to put his tongue down the boy's throat, masturbating the boy on a beach and performing oral sex upon him.

The prosecution alleges Mr Curran, a solicitor at the time, groomed the boy by spending lavishly on sailing trips, hotel rooms and even buying his parents a car and paying their bills.

Mr Curran's criminal defence barrister, Peter Boulten SC, admitted the pair often slept together but said they were always fully clothed.

He made clear that his client [vehemently denies the allegations](#) of improper conduct, telling the jury:

"Graeme Curran was a very close friend of the family and he became almost unconsciously a father figure".

"He had a very affectionate relationship with [the parents]

and all of their children, and he was a very generous and kind and caring part of the family.”

The barrister suggested the complainant had become ‘mixed up’ over the years, noting that the allegations became ‘bigger and better’ over time.

He foreshadowed the defendant testifying in his own defence.

The trial continues before Judge Anthony Rafter and a jury of twelve.

Indecent assault

[Indecent assault](#) is an offence under section 61L of the Crimes Act 1900 (NSW) which comes with a maximum penalty five years’ imprisonment if tried in a higher court such as the district court, or two years if the case remains in the local court.

To be found guilty, the prosecution must prove each of the following ‘elements’ beyond reasonable doubt:

1. The defendant assaulted the complainant

In the context of the section, an assault is the deliberate and unlawful touching of another person. The slightest touch is sufficient to amount to an assault and it does not have to be a hostile or aggressive act or one that caused the complainant fear or pain.

2. The assault was indecent

Indecent means contrary to the ordinary standards of respectable people in the community, and it must have a sexual connotation or overtone.

3. The assault was committed without the complainant’s consent

Consent involves the conscious and voluntary permission by the complainant to the defendant to touch the complainant’s body

in the manner that the defendant did.

Consent or the absence of consent can be communicated by the words or acts of the complainant.

4. The defendant knew the complainant was not consenting

The defendant must have known was not consenting. This is not a question of what a reasonable person would have realised, thought or believed, but what the defendant knew.

It is important to note that a person under the age of 16 cannot provide consent, and an indecent act will be regarded as an indecent assault in the absence of consent.

[Aggravated indecent assault](#) is an offence under section 61M of the Crimes Act.

To be found guilty, the prosecution must prove the above four 'elements' beyond reasonable doubt as well as at least one of the following 'aggravating circumstances'.

1. the defendant was the company of another person/s,
2. the complainant is under the authority of the defendant,
3. the complainant has a serious physical disability, or
4. the complainant has a cognitive impairment.

The maximum penalty is seven years' imprisonment, or ten years if the complainant is under the age of 16.

Sexual touching

In December 2018, the offence of indecent assault was replaced by 'sexual touching' in New South Wales.

[The offence of sexual touching](#) is now contained in section 61KC of the Crimes Act 1900.

The section states that a person is guilty of sexual touching if he or she, without the consent of the complainant and knowing that consent is absent, intentionally:

- sexually touches the complainant, or
- incites the complainant to sexually touch him or her, or
- incites a third person to sexually touch the complainant, or
- incites the complainant to sexually touch a third person.

'Sexual touching' is defined by section 61HB of the Act as touching another person with any part of the body or with anything else, or through anything, including anything worn by either person, in circumstances where a reasonable person would consider the touching to be sexual.

The section provides that the matters to be taken into account when deciding if touching is sexual include whether:

- the area of the body touched or doing the touching is the person's genital area, anal area or – in the case of a female person, or a transgender or intersex person identifying as female – the person's breasts, or
- the defendant's actions are for sexual arousal or sexual gratification, or
- any other aspect of the touching, or the circumstances surrounding the touching, make it sexual.

Touching is not sexual if it was carried out for genuine medical or hygienic purposes.

What are the penalties for sexual touching?

The maximum penalty for sexual touching is 5 years in prison if the case is dealt with in the District Court, or 2 years if it remains in the Local Court.

The maximum penalty increases to 10 years if the offence was committed against a child who was at least 10 years of age but under 16.

The maximum penalty is 16 years if the child was under the age

of 10.

What does the prosecution have to prove?

For a person to be guilty of sexual touching, the prosecution must establish each of the following matters:

- That the defendant touched the complainant or incited another to do so,
- That the touching was sexual,
- That consent was not given to the touching, and
- That the defendant knew consent was not given, or was reckless as to whether consent was given.

The prosecution will fail if it cannot prove each of these elements beyond reasonable doubt.

What are the defence to sexual touching?

In addition to the requirement that the prosecution must prove each element (or ingredient) of the offence, it must also disprove any of the following defences if properly raised:

- [Duress](#), which is where you were threatened or coerced,
- [Necessity](#), where the act was necessary to avert danger, and
- [Self-defence](#), where you engaged in the act to defend yourself or another, and
- Lawful correction of a minor.

It is important to bear in mind that, like everyone else, Mr Curran is presumed innocent until and unless he is proven to be guilty in a court of law.