

Permitting Indecent Dealing s 210(1)(c)

The prosecution must prove:

1. The defendant permitted the complainant to deal with him.

“Permitted” means allowed.

The expression “deals with” includes doing any act which if done without consent, would constitute an assault as defined in the Code.¹ Therefore “deals with” includes a touching of the defendant by the complainant.²

2. That such dealing was indecent.

The word “Indecent” bears its ordinary everyday meaning, that is what the community regards as indecent. Indecency is that which offends against currently accepted standards of decency.³

Indecency must always be judged in the light of time, place and circumstances.⁴

3. That such dealing was unlawful; ie not authorised, justified or excused by law. Eg the defendant must consciously allow the complainant to touch him.
4. That the complainant was under the age of 16 years.⁵
5. Refer to any circumstances of aggravation.⁶

¹ Section 210(6).

² The expression “deals with” is capable of wide application: *R v S* [1996] 1 Qd R 559.

³ *Attorney-General v Huber* (1971) 2 SASR 142.

⁴ *R v Dunn* [1973] 2 NZLR 481. See also Circumstances of Aggravation in Sexual Offences.

⁵ If the offence is alleged to have been committed in respect of a child of or above 12 years, it is a defence to prove that the defendant believed on reasonable grounds, that the child was of or above 16 years (s 210(5)). See also s229 which provides that, except as otherwise stated, it is immaterial that the defendant did not know the person was under the specified age or believed that the person was not under that age.

⁶ Section 210(3),(4) and (4A). See also Circumstances of Aggravation in Sexual Offences (100.1). The offence is a prescribed offence under s 161Q *Penalties and Sentences Act* 1992 so a serious organised crime circumstance of aggravation is applicable.