

Threshold to Charge

Marcus Boorman

- “Reasonable honest belief”; absence of corroboration not fatal
36. As an investigator, the threshold to charge is reliant on me forming a reasonable honest belief in the offence being committed based on all the evidence, both inculpatory and exculpatory, discovered during the investigation. In matters involving sexual assault, I apply the same threshold. If I form a reasonable honest belief, I will charge. In any criminal matter I believe corroborative evidence is beneficial, however the absence of corroborative evidence on its own is not, in my opinion, a reason to not charge. The difficulty, in my opinion, when investigating sexual assault matters is that it is one person’s word against another with little or no corroboration. In the absence of any exculpatory evidence, and in a situation when I was unsure, I would seek legal advice. This may assist me reaching a threshold of a reasonable honest belief.

Scott Moller

- “honest belief of the suspect’s guilt” and “honest and reasonable belief that your case is capable of being successful”
44. Investigators must conduct a comprehensive investigation in their pursuit to identify the truth. Once all avenues of inquiry have been finalised investigators are required to make a decision on whether the matter should proceed or not. The test is, do you as an investigator have an honest belief of the suspect’s guilt given a proper consideration of all of the admissible evidence you have collected. You must also have a honest and reasonable belief that you case is capable of being successful. Corroborative evidence is important however uncorroborated evidence may be sufficient for an investigator to reach an honest belief however I believe an exhaustive search for the truth will usually develop some form of corroboration. Some considerations for investigators in reaching an honest belief can include the strength of the victims account and honesty, crime scene evidence including forensic evidence, alleged suspect account including interview etc., the absence or inclusion of digital and/or electronic evidence from phones and CCTV. Finally, motive is also important to contemplate, if for example a victim approaches in relation to her child being assaulted and is currently involved in a custody dispute with the child’s husband then investigation of that is necessary.

Robert Rose

- Availability of “sufficient evidence” to establish all elements of the offence and negate defences

36. Where a review of the evidence identifies that an element of the offence is not made out, or that a defence is unable to be negated and that no further investigation, inquiry, or examination of other evidence or evidential sources is likely to establish that element or negate the defence; a critical decision should be made by the police officer that in the absence of sufficient evidence or existence of the un-negated defence, no charges should be laid, or criminal process be undertaken.

Emma Frizzell

- “Reasonable belief that the evidence supports a person being successfully convicted.”
80. In considering whether sufficient evidence exists, in my opinion, I must have a reasonable belief that the evidence supports a person being successfully convicted. What has complicated this threshold in recent times is the views being expressed by the ODPP that police only require a reasonable suspicion (eg. an EICI containing a complaint) to put a matter before the court and it is for the ODPP to decide, not police, if a matter has prospects of success or not.

Trent Madders

- *Previous*: “a belief that prima facia evidence supports the allegation for all elements of the offence” and “a prospect of obtaining a successful conviction”
 - *Now*: “honest belief that the probability of the accused’s guilt is such that a charge is warranted”
93. The threshold to charge a person with a sexual offence is:
- a. There has to be a belief that prima facia evidence supports the allegation, for all elements of the offence; and
 - b. There has to be a prospect of obtaining a successful conviction.
97. My understanding is the threshold to charge a person with a sexual offence is now defined as there is an honest belief that the probability of the accused’s guilt is such that a charge is warranted and there is a sufficient basis on the material present for this belief.

Lauren Gilliland

- *Previous*: “beyond reasonable doubt” but applied as “reasonable belief”
- *Now*: “honest belief that the probability of the accused’s guilt is such that a charge is warranted”

41. My understanding of the threshold to charge is that it is reasonable belief. ACT CI – SACAT investigators must be satisfied they have the following, before they proffer a charge:
- a) There is an honest belief that the probability of the accused’s guilt is such that a charge is warranted; and
 - b) There is a sufficient basis on the material present for this belief.
45. I am only aware of one underlying cultural view that existed within ACTP, AFP over the last four years with respect to conducting sexual assault investigations. When I was an investigator in SACAT between 2017 and 2019, I was taught the threshold to charge was ‘beyond reasonable doubt’ and this terminology was routinely used by myself and other members within SACAT during that time. Since returning to SOCA in my current role I clearly understand that was the incorrect terminology because the threshold then was reasonable belief. Beyond reasonable doubt is the threshold of the ACT Courts. I am not aware of any cultural issues relating to sexual assault complainant/victims being treated differently to other victims/survivors of crime.

Jason McDevitt

- Reasonable belief of the availability of “sufficient admissible evidence which was capable of achieving a successful prosecution”; absence of corroboration not fatal
67. In regard to an investigation, firstly, I would need to reasonably suspect an offence had been committed. Then I would conduct a thorough and objective investigation gathering evidence to prove both the common and specific proofs for that offence. Upon the conclusion of the investigation, I would need to determine if there were sufficient grounds to commence a criminal charge. I would conduct an independent assessment of the evidence and only charge a person if I reasonably believed I had obtained sufficient admissible evidence which was capable of achieving a successful prosecution. In some cases, in determining if I have sufficient evidence to charge or not, I may consider seeking legal advice through the chain of command and/or ODPP.

Michael Chew

- “reasonable possibility of obtaining a conviction”
29. For a person to be charged with an offence, regardless of the crime the investigator needs to satisfy themselves there is sufficient evidence for the prosecution to commence and there is reasonable possibility of obtaining a conviction. This assessment is undertaken once all the available evidence is collected, including, in regard to a sexual assault report, the willingness of the victim to proceed.

Neil Gaughan

- “reasonable grounds to believe that an offence has been committed”

37.1. My understanding of the threshold to charge a person with a sexual offence in the ACT from a policing perspective is that there are reasonable grounds to believe that an offence has been committed. A decision to proceed to charge should typically not be taken until a proper investigation has been undertaken. It is impossible to put a time period on when this relevant threshold in the mind of the investigator is reached. Ultimately the discretion does rest with the investigating officer but they must make the decision in accordance with relevant laws and be able to justify their decision rationally.

Peter Crozier

- “reasonable and probable cause to prefer a charge”
69. [Q32] My understanding of the threshold for police to charge a person with a sexual offence in the ACT is that the responsible officer must have reasonable and probable cause to prefer a charge. I understand that reasonable and probable cause exists where the responsible officer holds a reasonable belief that the offence has occurred.
70. The factors affecting whether the charging threshold is met turn on the circumstances of each individual case.

Joanne Cameron

- “reasonable and probable cause” upon “sufficient evidence to put before the court that, *prima facie*, the offence was committed” by the alleged person
89. My understanding is that the charging threshold for police officers is “reasonable and probable cause”.
90. Practically speaking, in my view, a police officer should reach the charging threshold where there exists sufficient evidence to put before the court that, *prima facie*, the offence was committed by that person as alleged.

Hall O’Meagher

- “reasonable and probable cause ... similar to a reasonable belief” with “sufficient basis on the material present”

29. To my knowledge the threshold to charge a suspect with sexual assault offences has not changed. As a result of this investigation and also various consultation with the ODPP the ACT Police identified there was no specific policy in regard to threshold to charge. A review was conducted and on 10 May and 13 July 2022 ACT Criminal Investigations received advice from AFP Legal in relation to the threshold to charge a person with a sexual offence. Attached and marked ‘**Exhibit 9**’ is a copy of the relevant email chain. Guidance aligned with the advice has been communicated to members of the Sexual Assault & Child Abuse teams. Attached and marked ‘**Exhibit 10**’ is a copy of the relevant email chain. In summary, the communications advised members of the following:
- a. The threshold to charge is on the basis of reasonable and probable cause which is similar to a reasonable belief. The concept can be unpacked with the following two part test:
 - i. Do you hold an honest belief that the probability of the accused’s guilt is such that a charge is warranted; and
 - ii. Is there a sufficient basis on the material present for this belief.

David Fleming

- “reasonable grounds to suspect that an offence has occurred” and “sufficient inculpatory evidence to suggest that a prima facie case exists”
80. When taking this statement and assessing its validity, the case officer must have reasonable grounds to suspect that an offence has occurred and ensure that the investigation has discovered sufficient inculpatory evidence to suggest that a prima facie case exists with all the proofs of the offence been met.

Sarah Harman

- “reasonable prospect of a successful prosecution”; “there must be sufficient corroborative evidence”
38. Firstly, there must be a prima facie case. Then I would consider what further evidence is available to be obtained. Then I would examine the evidence and the credibility of that evidence to determine if there was a reasonable prospect of a successful prosecution before I decided to charge someone with a sexual assault or any other offence. There must be sufficient corroborative evidence in order to proceed to court in relation to any offence type. In relation to a sexual assault complaint, an offence must be identified to investigate. Things that can affect the corroborative evidence are, being unable to remember what occurred, multiple versions of events or significantly different versions of events. Evidence that directly contradicts the offence or version provided. An exculpatory version of events from the defendant with sufficient corroborative evidence.

Heath Langlands

- “sufficient evidence to corroborate the charge or sufficient evidence to support a prima facie case”

104. In order to charge a person with a sexual offence, there needs to be sufficient evidence to corroborate the charge or sufficient evidence to support a prima facie case. This often means a complainant’s version of events should be supported by corroborating evidence.

105. I also believe it is my responsibility not to progress a complaint if there are no prospects of proving the charge before a court. This may be due to a lack of evidence to support the allegation or if, in searching for corroborating evidence, sufficient evidence comes to light that contradicts the complainant’s allegation.

Ian McCartney

No view proffered.

Reece Kershaw

Decision to Charge

Question 61

98. As AFP Commissioner, as a matter of course I am not involved in the day to day decision making of whether to charge someone but I am briefed in relation to such decisions where appropriate. The decision to charge is generally made by the officer responsible for the investigation. In making that decision, officers may consult with others, including their team leader and/or the Adjudication Sergeant as appropriate. In some cases, advice will be sought from the DPP prior to charges being laid, for example where there are queries around whether or not evidence proposed to be included in the brief would be admissible. In my view, the independence of an officer’s decision to charge should not be “balanced” with legislative requirements. Rather, an officer’s decision to charge must be made in accordance with any relevant laws. Similarly, the independence of an officer’s decision to charge should not be “balanced” with external pressures or influence such as media or political interest in a case. That is not to say that an officer should never consult with or have regard to the views of others. As outlined above, it is common practice and appropriate for officers to consult with their superiors or the DPP about a matter. It is also typical and appropriate to have regard to the interests and wishes of the victim in reaching the decision to charge. Ultimately, however, the decision is that of the officer alone and should not be affected by external pressure or influences.