



SEX AND CONSENT

Consent is a fundamental part of any sexual activity. Sex without consent is not sex: it is sexual assault.

Sexual rights and responsibilities

We all have sexual rights and responsibilities. We have the right to decide when, where and with whom we would like to be sexual. We do not have the right to be sexual with someone if we're not sure they're into it. We have to ensure that the people we are sexual with actively consent to any sexual activities done together.

Each and every time you do anything sexual, from touching and kissing to having any kind of sex, you must always have the other person's consent from beginning to end. People might consent to one thing, but not to others. People might consent to begin with, and then change their mind. That is their right. If you are not sure whether the other person wants to keep going but you keep going anyway, it is not only unethical—it is a crime.

Sex and Consent: The Basics

Consent means only doing something because everyone involved really wants to. There is no consent if anyone is feeling pressured or unsure.

Knowing about the importance of consent and making sure that it is present is not just useful because it will help you avoid trouble with police—it will also make sex more enjoyable, satisfying, respectful and fun for everyone involved.

How to check for consent

There must be consent throughout the whole sexual experience and for each and every act.

The law is clear that we should never assume someone is consenting. You can't assume consent because they said yes at other times or because of their reputation or the way they act or dress. If we continue to be sexual towards someone because we assume that it's OK without checking, or don't care whether they are consenting or not—this is sexual assault. Sexual assault is a crime.

People can show sexual consent by words or actions. Just because someone doesn't say "no" doesn't mean they are consenting. You can check to see whether you're getting an enthusiastic "yes" from the other person, either by their words or actions. If you are not, or you're getting mixed signals, or you're unsure, it's your responsibility to stop what you're doing. Going on could be sexual assault.



Ways to Check in for Consent

Some ways to check in could be by asking "do you feel like...", "what do you want to do?", "how does this feel for you?", "what makes you feel good?". You could also check body language: does their body language show you that they're into it? Are they showing enjoyment? Is their body language consistent with what they say?

Age of Consent

What is the age of consent in SA?

The age of consent in SA is 17. This means that it is against the law for anyone to have sex with someone who is under 17. For example, an 18 year old who has sex with a 15 year old.

If the older person is in a position of power or authority over the younger person (e.g. a teacher at their school, or their youth worker, step parent, boss, religious leader, sports coach, etc.) then the age of consent is 18. This means that the young person must be 18 or older before the law says that they are capable of consenting to that sexual relationship. If they're not 18 or older, then the person in a position of power or authority is breaking the law.

Limited defences might apply.

What about if one of us is 17 or older and the other is under 17?

Even if you both agree, the law says that the person who is over the age of consent is breaking the law for having a sexual relationship with someone under 17.



What if we're both under 17?

There are a whole lot of factors that affect whether police decide to charge or prosecute someone for having sex with someone under the age of consent. It is up to the police to decide what to do, not anyone else. While it is less likely that police will charge two people who are, for example, both 16 and agree to have sex, if it looks like there may be a power imbalance, or things look more complex, they might still decide to look at the situation more closely.



Contact us!

Would you like more information, resources, or a free visit to your school, organisation or group?

Email: cle@lsc.sa.gov.au

To apply for legal aid online, visit: www.lsc.sa.gov.au

Acknowledgments:

The Legal Services Commission gratefully acknowledges the assistance of Victoria Legal Aid and the National Children's and Youth Legal Centre in allowing the Legal Services Commission of South Australia to use and adapt existing content.



Call our free Legal Help Line:

1300 366 424

Disclaimer: The material in this factsheet is a general guide only. It is not legal advice. For legal advice about your own particular situation we encourage you to call the Free Legal Helpline on 1300 366 424. The legal information was correct at the time of publishing, however may change without notice.

April 2023