

# SEX AND CONSENT

**Consent is absolutely fundamental to sex. Sex without consent is sexual assault. For free and confidential counselling or support, call 1800 RESPECT (1800737732)**

## Sexual rights and responsibilities

We all have sexual rights and responsibilities. We all have the right to decide when, where, in what situation, and with who we would like to be sexual with. However, we *don't* have a right to be sexual with someone if we're not sure whether they're into it. We all have the responsibility to make sure that the people we want to be sexual with actively *consent* to whatever sexual activities you do together.

Each and every time you do anything sexual, ranging 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 or a few things, but not to others. People might consent to begin with, and then change their mind. That's their sexual right. If you're not sure whether the other person wants to keep going but you keep going anyway, is not only unethical—it's a crime.

## Sex and Consent : The basics



Sexual consent means only doing something sexual because everyone involved really wants to and are making an active choice to be involved and continue, not because anyone is feeling pressured or unsure.

Knowing about the importance of consent and making sure that it's present in all sexual activities is not just useful because it will help you to not get in trouble with police - it will

## Important to remember

Under the law (and in this factsheet), 'sex' means all types of sex acts and sexual touching between all types of people, including masturbation and oral sex.

The laws about consent apply to people of all sexes, genders, and sexualities.

mean that sex can be enjoyable, satisfying, respectful, and fun - for everyone involved.

Consent is all about *free and voluntary agreement* which means that for consent to be present, the law says that people must:

- **Feel safe** – being sexual without pressure, fear, manipulation, or threats;
- **Understand** – being awake and in control, not being so drunk or high that they are not sure about what they or the other person wants, and not having a mental or physical disability that is so severe that it prevents them from understanding what's going on; and
- Be the **legal age to consent** - 17 or older

## 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. We should never assume that a person is consenting because they have 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 in with them, or don't care whether they are consenting or not – this is sexual assault and can be a criminal offence.



**Disclaimer: The material in this factsheet is a general guide only. It is not legal advice. The legal information was correct at the time of publishing, however may change without notice.**



**Legal Services  
Commission**  
OF SOUTH AUSTRALIA

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**1300 366 424**

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## So, how do we check for consent?

People can show sexual consent by words or actions. Just because someone doesn't say 'no', doesn't mean that they are consenting. We all have the right to react in different ways. You can check to see whether you're getting an enthusiastic 'yes' from the other person, either by their words or their actions. If you're 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.

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 do you like?", "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

There are laws about not having a sexual relationship with people under a certain age. This is because the law says that a person must be 'the age of consent' or older to be able to legally consent to being involved in any kind of sex. A person can be charged with a sexual offence if they are involved in a sexual act that breaks these laws, even if the young person under the age of consent agreed to be involved. These laws apply even if the people are in a relationship with each other.

## 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.

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

Even if you both agree, the law will say 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 which effect whether police decide to charge or prosecute someone for having sex with someone under the age of consent. It's 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 follow through with this.

## Contact us!

Got a legal problem?  
Call our free Legal Help Line:  
**1300 366 424**

Would you like more information,  
resources, or a free visit?  
Email: [cle@lsc.sa.gov.au](mailto:cle@lsc.sa.gov.au)

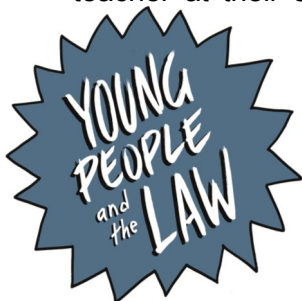
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## Acknowledgments:

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