



Villamanta Disability
Rights Legal Service Inc.

Villamanta Disability Rights Legal Service Inc.

Information Sheet Updated November 2014

Sexual Rights

Can I have sex?

The law makes rules about sex and sexual touching. It says that any sexual touching without your agreement is against the law. This is known as a 'sexual offence' and is a very serious crime.

The law sets age limits for having sex, to help protect you from being taken advantage of by other people, especially people older than you.

What is 'informed consent'?

The law says that you have given informed consent when:

- You have decided to do something, or not to do something because that is what you want;
- You have been able to get information about the things you need to know and this has helped you make up your own mind;
- You understand your rights, what the law says, and what protections you have and have been able to work out what are the best and worst things that could happen;
- You have made up your mind for yourself, not because you don't want someone else to feel bad or do something to you.
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The only way to know for sure if someone has given you consent to do something is if they tell you.

What does the law say about consent and sex?

The law says consent means free agreement. This means you agree to do something because you want to, and it is your choice. You are **NOT** freely agreeing to sex if you:

- Are forced to have sex;
- Have sex because someone says they will hurt you, or someone else, if you don't;
- Have sex because someone won't let you leave;
- Can't agree to have sex because you are asleep, unconscious, drunk or have taken drugs so that you can't speak up;
- Think that the person you are with is someone else
- Get mixed up and think what is happening is something a doctor would do.

How old do I have to be to have sex?

Even if a person says they do not know the rules about age limits, they can still be charged with committing a sexual offence. Young people can be charged with sexual offences too.

Important Note - This Information Sheet has been produced only for use in Victoria, Australia. Some of the laws mentioned in this Information Sheet will be different in other places.

Make sure you know the rules for your age.

The table below describes the laws about sex at different ages. This includes having sex, doing sexual touching, or someone else doing sexual things in front of you.

These laws apply to everyone, no matter where they live, or if they have a disability or not.

How old are you?	What the law says	An example	Reasons why this may not be illegal
Under 10 years old	You cannot agree to sex.	It is illegal for someone to touch a nine year old child in a sexual way.	None
10-15 years old	If someone is more than two years older than you, you cannot agree to sex.	If someone who is 17 has sex with someone who is 15 it is not a crime. If someone who is 18 has sex with someone who is 15 it is a crime.	It is not a crime if the older person honestly believed that there was less than two years age difference between you.
16 or 17 years old	You cannot agree to sex, with anyone caring for you, or supervising you (like a foster carer or a teacher)	If your adult teacher has a sexual relationship with you when you are 16, it is a crime.	It is not a crime if the person honestly believed you were 18 or older
18 years and over	People over the age of 18 can agree to have sex with anyone else over 18	If someone who is 18 has sex with someone who is 19, it is not a crime	

When the law says that having sex with you is not a crime if the person honestly thought you were older than you were, it is expected that they will make a reasonable effort to find out how old you are, and not just say they didn't know.

Do I have to get married to have sex?

No. Some people do not want to have sex before they are married for religious, moral, or other reasons.

Is there any difference if I have sex with someone of my own sex rather than someone the opposite sex?

No. So long as the other person consents and you are the right age.

Are there more laws if I live in a residential facility?

Yes. The law says it is a crime for a worker at the residential facility to have sex with you unless you are married to them, or in a de facto relationship with them.

Are there more laws if I have an intellectual disability, mental illness, dementia or brain injury?

Yes. The law says it is a crime for a person who is providing you with medical or support services to have sex with you, unless you are married to them or in a de facto relationship with them.

What if I don't want to have sex?

It's OK to say "No" if you don't want to have sex. Remember:

- You are in charge of your body and you have the right to say what happens to it.
- You don't have to have sex with someone if you don't want to, even if you are married to him or her or have had sex with them before.

It is against the law for someone to have sex with you when you don't want to.

What things do you have a right to say no to?

You have a right to say no to any sexual behaviour that you feel scared, uncomfortable or makes you feel that you must do what someone else wants. It does not matter if you are being hurt or not. This includes not having your photo taken naked, or being sent messages or photos of a sexual nature on a mobile phone or on the internet.

Mobile phone pictures and 'sexting'

'Sexting' or sending 'sex messages' is where nude and/or sexual images are taken on a mobile phone, often by young people and their friends. This is a crime if the photo includes a person under 18.

What if someone else thinks that I am not able to make my own decisions about who I have sex with?

Only a person has been appointed as your legal Guardian, is given the right to by the *Guardianship List* to make decisions about your sexual relationships. No one else has the authority to prevent you from making your own decisions about sexual relationships. The Guardian will have a letter with an order which states this.

What is incest?

Having sex with someone in your family, like your brother, sister, mother, uncle, father or grandfather is called incest. It is illegal whether you agree to it (consent) or not. No matter how young or old you are. It is still incest even if a person is not related to you by blood but is a close family member, like your stepfather.

What happens if I think someone has broken the law by having sex with me?

It's important to tell someone, if you think someone has broken the law by having sex with you. It's not your fault if someone else has broken the law. Keeping it secret may make you feel bad. Telling someone about it may stop the person from hurting you again or hurting someone else.

You don't have to tell the police if you don't want to. There are trained sexual assault workers who can help you decide what to do and talk about what happened. They will not tell anyone else if you don't want them to.

Some useful numbers:

<p>Family Planning Victoria Phone: 1800 013 952 (free call) www.fpv.org.au/</p>	<p>Centre Against Sexual Assault (CASA) Phone: 1800 806 292 (free call) www.casa.org.au/</p>
<p>Women's Legal Service Phone: 1800 133 302 (free call) www.womenslegal.org.au/</p>	<p>Your local Community Legal Centre (CLC) For you nearest CLC call (03) 9652 1500 www.fclc.org.au/</p>

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