

Age of Consent

What is the age of consent?

In Western Australia, at present, the age of consent for sex is 16 years for both males and females.

It is an offence to have sex with someone under 16 years of age, even if they agree, as the law says that he/she cannot consent.

It is an offence for an adult, in a position of authority over a young person, e.g. Police Officer, School Teacher, or Youth Worker, to have sex with someone unless he/she is over 18 years of age.

So does this mean that once I turn 16 can I have sex with whoever I want?

As long as the "sex" is consensual and the other party is also aged 16 years or over, it is not against the law. There are exceptions such as if the person is in a position of authority over you (teacher, spiritual adviser, health professional, guardian) then you must be aged 18 or over to consent to sex. If the person is "mentally impaired" they may not be able to give consent regardless of their age and if the person is a "lineal relative" or step-parent it is illegal to have sex with that person.

In addition to the law permitting consensual sex from age 16, there may also be the moral, emotional, religious and cultural aspects to consider as well as the risk of pregnancy, sexually transmitted diseases, loss of reputation and self-respect.

What if my girlfriend is not 16 yet?

Under the Criminal Code, anyone under the age of 16 is said to be a child who cannot consent to sex or sexual behaviour even if they agree. It is therefore an offence to:

- a) sexually penetrate
- b) encourage engagement in sexual behaviour
- c) indecently deal
- d) encourage to do an indecent act
- e) indecently record anyone under the age of 16 (s.320 and s.321 Criminal Code).

Sexual Penetration can be to the vagina, anus or urethra of the other person with any part of your body or with an object manipulated by you. It also means to manipulate any part of his/her body so as to cause penetration of the vagina, anus or urethra by any part of the body. It also includes engaging in oral sex (s.319 Criminal Code).

It is illegal to encourage a young person under 16 to engage in any form of sexual behaviour and it is a crime whether or not the young person under 16 agrees to it (s.321(3) Criminal Code).

It is illegal to sexually penetrate anyone without their consent, no matter what age they are (s.325 and s.326 Criminal Code). This means that you must be sure that a person consents to engage in sexual behaviour freely and voluntarily. If force, threats, intimidation, deceit or fraud is used to engage in sexual behaviour with another person, then this is not consensual.



Age of Consent (continued)

How do I know if the other person is consenting to have sex?

Firstly, you must know that the person is aged 16 years and over. Secondly, the safest way to gauge the other person's consent is to ask and to receive a clear and unhesitant "Yes". Consent can be withdrawn at any time, if this happens to you, you must cease the act immediately to avoid committing an offence.

Can I have sex with someone when they are "out of it"?

If a person fails to offer any physical or verbal resistance to your sexual advances, this does not necessarily mean that the person consents. If you engage in sexual behaviour with someone who appears to be so drunk or stoned that they do not know what is going on, then this is not consent. This may be indecent assault or sexual assault and both are very serious offences.

Keep in mind that it is not only females who get sexually assaulted or raped because they are too drunk or stoned to consent, males get raped too.

Is there any harm in having a "feel" when I am just "mucking around"?

If you touch a female on the breast or a male or female between the legs and in some circumstances on the bottom, or if you grab someone's hand and get them to touch you on the breast (if you are a female) or between the legs (if you are a male or female) then this may be an Indecent Assault if the other person does not agree to it (s.323 Criminal Code).

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Important: This general information is not the same as legal advice. You should speak with a lawyer about your situation.



For assistance contact:

Kids Helpline

1800 551 800

Crisis Care

9223 1111 or 1800 199 008

For help with this and other issues contact:

Youth Legal Service Inc (WA)

(08) 9202 1688 (Perth Metro)

1800 199 006 (Country WA)

www.youthlegalserviceinc.com.au