

Youth Law: Sex and Consent

This factsheet is designed to help young people learn their rights and obligations surrounding sex and consent in the ACT. If you are a young person with a matter concerning sex and consent, please call the **Youth Law Centre ACT** on **6173 5410** or **1300 654 314**.

Note: The Youth Law Centre (YLC) is Legal Aid ACT's dedicated service for young people under the age of 25. It is a free and confidential legal service.

Legal Aid ACT's Youth Law Centre can help you if you have questions about sex and consent laws in the ACT or if you have been charged with a sexual offence. We can also help you if you are the victim of a sex crime. We can help you by:

- Giving you information and legal advice about sex and consent laws in the ACT.
- Representing you in Court if you have been charged with a sex crime.
- Referring you to non-legal support services such as counsellors or government services.
- Giving you information about reporting a sexual offence to the police.

Sex and Consent

What is sex or sexual activity?

The law defines sex as penetration of a person's genitalia or anus by any part of the body of another person or any object, or any kind of oral sex, unless done for proper medical purposes.

A sexual act can include different activities including:

- Sexual intercourse with another person;
- Sexual touching;
- Sexual acts that don't involve touching

What if someone does something that makes me uncomfortable?

If someone has done something without your permission or has made you feel uncomfortable, this may be a crime. You can report the incident to police or contact Legal Aid ACT on 1300 654 314 for more advice.

What is sexual harassment?

Sexual harassment is any unwelcome sexual behaviour in circumstances where a reasonable person would think you might be offended, humiliated or intimidated. It's against the law. This could include:

- Unwelcome sexual advances;
- Request for sexual favours;
- Unwanted sexual behaviour aimed at you or in your presence.

For more information, visit the Australian Human Right's Commission [website](#).

What is consent?

- Consent is a **free** and **voluntary** agreement to do a sexual act. If you feel threatened or forced to give consent, it does not count.
- You can change your mind at any time.
- Agreeing to one sexual act does not mean you agreed to a different act.
- Agreeing to a sexual act in the past does not mean you have to agree in the future.

Consent, drugs, and alcohol

- Consent gets messy if a person has alcohol or drugs. If a person cannot agree because they are too drunk, they cannot consent.

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- Having sex with someone who is too drunk to consent is a very serious criminal offence.
- If a person is unconscious or asleep, they cannot consent to any sexual activity.
- If a person is confused, slurring their words, is struggling to stay awake or stand up, or is off balance and seems really drunk, they probably can't consent to sex.
- If you think that someone could be too drunk to consent, **don't risk it.**
- If you have sex with someone after lying to them, you could be committing a very serious offence.
- It is a serious criminal offence to lie about using a condom or to take it off during sex without the other person consenting.

How to ask for and give consent

- To be safe, you should always use words to ask for consent before doing any sexual act.
- You can give consent either with words or actions. A clear "yes" is best.
- Consent does not mean that "they didn't say no." Consent can only be given if someone willingly and freely agrees.
- If the answer is "No" or "I'm not sure", if the other person does not seem certain, or the other person is unresponsive or silent, it means consent has not been given.
- If someone says no or is unsure, you cannot pressure them to have sex with you.
- You need to be confident every time you have sex that the other person is consenting. Think about what they have said or done that shows they want it to happen.
- If you're not sure if they have consented, **do not have sex with them.**

Telling the truth before sex

- If you agreed to sex because of a lie that they told you, then you did not consent, even if you agreed at the time.

Remember

You need to have consent before doing any kind of sexual activity with another person. Consent needs to be communicated every time for every sexual act. You cannot ever assume that someone has consented, even if you're in a relationship with that person, or they have consented to something in the past.

Consent is important for all people, of all sexualities, in all kinds of situations. You must have consent for any kind of sexual activity with another person. It is NEVER okay for someone to do something sexual to you without your consent.

If you feel pressured to do something sexual, or if you're not sure if you want to, **you can say NO.** If you say yes and then decide you no longer want to do something, you can stop **at any time.** The other person must respect your choice. If they do something sexual with you without your agreement, they may be committing a serious crime.

What is the age of consent?

If you are under the age of consent, you cannot legally agree to sexual activity, and any person who does something sexual with you has broken the law.

In the ACT, it is **never** legal to do a sexual activity with someone who is under 10 years old.

In the ACT, if you are between 10 to 15 years old, it is legal for someone to do a sexual act with you only if you agree to it and they are less than 2 years older

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than you; or you agreed to it and they honestly believed, on reasonable grounds, that you were 16 or older.

When you are 16 years and older, you can have sex with another person aged 16 years and older if you both consent.

What if someone has special care/authority over you?

When you are between 16 to 17 years old, you cannot consent to sexual activity with someone who:

- Has special care over you; or
- Is supervising you; or
- Has authority over you such as a teacher, sports coach, youth worker, counsellor or police officer, foster carer, religious instructor, health professional or employer.

What if someone sends sexual pictures of me over a phone or the internet?

Sharing a person's intimate image without their consent is a crime.

A person's intimate image is a photo or video of their private parts or them doing a sexual act.

Threatening to share a person's intimate image is also a crime.

See our factsheet on Image Based Abuse and Sexting for more information.

What if someone breaks the law?

If you think you could be the victim of a sexual offence, you can report this to the Sexual Abuse and Child Abuse Team with the ACT Police if you wish to do so. Reporting to the police is a decision for you to make.

You can also attend at the Canberra Hospital or North Canberra Hospital for medical treatment and/or to undergo forensic testing.

If you decide to make a report to police, they will take a statement from you as part of their investigation. At the end of their investigation, they will decide if they are going to charge the other person with a criminal offence. Police should consider your views when deciding whether or not to lay charges.

Sexual offences can carry serious penalties, including going to jail. A person who has been convicted of a sexual offence against a child may be placed on the Child Sex Offenders Register in the ACT.

If you believe someone has committed sexual offences, or if you are worried that you have, Legal Aid ACT is here to help you. Contact us on 1300 654 314 for free and confidential legal advice and both legal and non-legal support.

Thinking about having sex?

Deciding to start a sexual relationship with someone, or have sex with them, is a big step.

If you are thinking about having sex, be aware of the risks that are involved with unsafe or unprotected sex. These risks include:

- Getting a sexually transmissible infection (STI);
- Getting a blood borne virus like HIV;
- Unplanned pregnancy; and/or
- Unplanned parenthood.

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Useful Contacts

Legal Aid ACT

Monday to Thursday: 8:30am to 7:00pm

Friday: 8:30am to 5:00pm

www.legalaidact.org.au

Phone: **1300 654 314**

Canberra Rape Crisis Centre

For free support for those who have experienced sexual assault or domestic violence.

www.crc.org.au

Phone: **1800 737 732**

Youth Law Centre

Monday to Friday: 8:30am to 5:00pm

ylc@legalaidact.org.au

Phone: **1300 654 314**

Victims Support ACT

For non-legal support.

Phone: **(02) 6205 2222**

Sexual Health and Family Planning ACT

For sexual health advice.

www.shfpact.org.au

Phone: **(02) 6247 3077**

1800RESPECT

Provides free counselling, information and support for people who have experienced sexual assault or domestic and family violence.

Phone: **1800 737 732**

Kids Helpline

For free and private counselling.

www.kidshelpline.com.au

Phone: **1800 55 1800**

Canberra Sexual Health Centre

For free testing and treatment.

Phone: **(02) 5124 2184**