



## Sex And Age Of Consent

### What Is The Age Of Consent?

The age of consent is the age at which a person is considered legally competent to agree to sexual activity with another person. In Western Australia, the age of consent is 16 years for both males and females. Anyone under the age of 16 is said to be a child who cannot consent to sex or sexual behaviour, even if they agree.

### So, Does This Mean I Can Have Sex With Whomever I Want Once I Turn 16?

If the sex is consensual (and it must be enthusiastic consent) and the other party is also aged 16 years or over it is not against the law, although there are some exceptions:

- If the person is very drunk or under the influence of drugs, they may not have the capacity to consent so having sex with them is an offence.
- It is an offence for someone in a position of authority over a young person to have sex or engage in any sexual behaviour with that young person unless the young person is over 18 years of age. Persons in a position of authority include but are not limited to police officers, teachers, spiritual advisers, health professionals, youth workers and guardians.
- If the person is mentally impaired, they may not be able to give consent, regardless of his/her age.
- If the person is a lineal relative, step-parent or step-child it is illegal to have sex with that person.

### What If My Girlfriend Or Boyfriend Is Not 16 Yet?

It is a very serious offence to engage in sexual activity with anyone under 16 years of age, even if you are in a relationship and they agree, as the law says that they cannot consent.

It is still illegal if you are both under 16 years of age. In this case, you could both be charged.

### How Do I Know If Another Person Is Consenting To Have Sex?

Firstly, you must be certain that the person is aged 16 years or over and mentally capable of consenting. Secondly, you must be sure that the person consents to engage in sexual behaviour freely and voluntarily.

It is illegal to sexually penetrate anyone without their consent, no matter what age they are. If force, threats, intimidation, deceit, fraud, or tricks are used to engage in sexual behaviour with another person, this is not consensual. The safest way to gauge the other person's consent is to ask and to receive a clear and unhesitant "Yes". It is often described as "enthusiastic consent".

Consent can be withdrawn at any time.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 is so drunk or stoned that they do not know what is going on, this is not consensual.

## Is There Any Harm In Having A Feel?

It is an offence to touch a female on the breast or a male or female between the legs, or in some cases on the bottom, or to get them to touch you in any of these places if the other person does not agree to it or is under 16 years of age.

## More Information

Sexual Assault Resource Centre: <https://www.kemh.health.wa.gov.au/Our-services/Statewide-Services/SARC>.

WA Police: Your Safety <https://www.police.wa.gov.au/Your-Safety/Sexual-assault>

Youth Law Australia – Sex: <https://yla.org.au/wa/topics/health-love-and-sex/sex/>

Kids Helpline: <https://kidshelpline.com.au/teens> or call **1800 55 1800**

**Please note:** Laws are subject to change. Last updated July 2020.

**Important:** The information provided in this infosheet is for information only.

It should not be relied on as legal advice.

Please seek legal advice about your particular circumstances.