

Consent to sex

Anyone can talk to a lawyer for free at Tasmania Legal Aid.

To get free legal information call 1300 366 611, drop into our Hobart or Launceston office (no appointment necessary) or use the Legal Talk chat function on our website. We are open Monday to Friday, 9am to 5pm.

A lawyer can listen to your story and help identify the next steps you can take.

Consent to sex means you understand what you are giving consent to and there is nothing stopping you from showing if you agree, decline or change your mind to take part in sex or sexual activity.

What does consent mean?

Consent means agreeing to something. For someone to do this they must be old enough to understand what it is they are giving consent to. To say 'Yes' they must be free to also say 'No' – therefore, someone cannot be pressured into giving their consent.

Someone cannot freely consent if they are drunk, drugged, unconscious or asleep. It is also not consent if they are forced, tricked or threatened into having sex. If you have sex with someone who is unable to freely consent, this is sexual assault, which is a serious crime.

Anyone can withdraw their consent at any time – it doesn't matter if you've already started to have sex. If one person isn't into the sexual activity, then you have to stop.

How can I tell whether someone consents?

You need to know that the person you are with consents to what you are doing.

Watch out for non-verbal signs that the person you are with is not consenting to what you are doing. Non-verbal signs can include things like turning away, pushing your hand away, "freezing up" or not responding to your touch. You commit a crime if you touch someone in a sexual way and they don't want it – whether they've actually said 'no' or not.

You can ask questions like these to make sure the person you are with is consenting:

"Does this feel good?"

"Are you happy if I continue?"

"Please tell me if you want to stop or change what I am doing?"

When is someone not able to give their consent?

For someone to be able to give their consent freely they must understand what they are saying Yes to (that is, it is "informed consent").

Someone who is asleep or lacks the mental capacity to understand what they are consenting to cannot give their consent.

The law also acknowledges that some people cannot freely give their consent to someone who is in a position of power over them. Some professions have ethical codes and standards which don't allow professionals to have a sexual relationship with their clients; doctors, teachers and counsellors are examples of professions where we recognise that a patient or student or client cannot freely consent because of the power imbalance of the relationship.

In addition to this, the *Criminal Code* lists offences which make it a crime for someone in a position of authority to have sex with a child even if that child is otherwise old enough to give their consent. It is also a crime for someone in authority to fail to protect a child from a sexual offence.

What if someone is drunk?

If someone is drunk, they are unable to give their consent. If you have sex with someone who is drunk, you could be charged with a serious crime.

Am I old enough to have sex?

It is a crime to have sex with a person under the age of 17. But you might have a defence if you are a similar age and both of you consent.

There are different laws in each state about how old you have to be before you can have sex. You could be charged if you have sex with someone who is outside the legal age of consent.

In Tasmania the following ages apply where someone is otherwise able to give their consent:

- If you're under 12, a person can't have sex with you, touch you sexually or perform a sexual act in front of you, even if you agree. The law says you're too young to consent to sex
- If you're between 12 and 15 years old, a person can't have sex with you, touch you sexually or perform a sexual act in front of you if they are more than three years older than you, even if you agree
- If you're 15 years or older, a person can't have sex with you, touch you sexually or perform a sexual act in front of you, if they are more than five years older than you, even if you agree
- If you're 17 years or older, you can consent to have sex with anyone else 17 years or older, as long as the other person is not in a position of authority – like a carer, coach, teacher, employer, or anybody else with authority over you.

This is written for people who live in or who are affected by the laws of Tasmania, Australia. The law changes all the time – this information is not legal advice. If you have a legal problem, you should talk to a lawyer before making a decision about what to do.