

Legal Age of Consent

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Legal Age of Consent



Jurisdiction	Age of consent	Legislation and exceptions	What is consent (children and adults)
ACT	16 years	<u>Crimes Act 1900 (Section 55)</u> Exception/defence: if the young person is 10-15 years old and there is less than a 2-year age difference between the other person and the person consented to the intercourse OR the other person honestly believed young person over 16.	'Consent' is defined as a free, voluntary and informed agreement between two parties. Consent can only be given if it is free and voluntary, without fear, coercion, intimidation or anything else that inhibits free agreement (Australian Law Reform Commission, 2010; Powell, 2010) Applies to both children and adults. <u>Crimes Act 1900 s 67</u> – when a person does not consent to an act.
NSW	16 years	<u>Crimes Act 1900 (Section 66C)</u> Exception/defence: if the young person is 14-16 years old, and the age difference between the two young persons is no more than 2 years (section 80AG)	<u>Crimes Act 1900 (Section 61HI)</u> A person consents to sexual activity if, at the time of the sexual activity, the person freely and voluntarily agrees to the sexual activity. Applies to both children and adults. Section 61HJ – Circumstances where a person does not consent to a sexual activity
NT	16 years	<u>Criminal Code Act 1983 (Section 208J(5))</u> Exception/defence: if there is less than 2 years age difference between the two young persons and the person consented to the intercourse	<u>Criminal Code Act 1983 (Section 208GA)</u> Consent to a sexual act means free and voluntary agreement to the act. Applies to both children and adults. Section 208GA(2) - Circumstances where a person does not consent to a sexual act

Jurisdiction	Age of consent	Legislation and exceptions	What is consent (children and adults)
QLD	16 years	<u>Criminal Code Act 1899 (Section 215)</u> Limited exception/defence: if the young person is 12-15 years old, and the other person believed on reasonable grounds that child was 16.	<u>Criminal Code Act 1899 (Section 348)</u> Consent means consent freely and voluntarily given by a person with the cognitive capacity to give the consent. Applies to both children and adults. Consent is not freely and voluntarily given if it is obtained by: • Force • Threat or intimidation • Fear of bodily harm • Exercise of authority • False and fraudulent representations • Mistaken belief
SA	17 years	<u>Criminal Law Consolidation Act 1935 (Section 49)</u> Exception/defence: if the young person is 16-17 years old and both persons were under 17 OR the other person believed on reasonable grounds the young person was 17 years old	<u>Criminal Law Consolidation Act 1935 (Section 46)</u> A person consents to sexual activity if the person freely and voluntarily agrees to the sexual activity. Applies to both children and adults.

TAS	17 years	<u>Criminal Code Act 1924 (Section 124)</u> Exception/defence: If the child was of or above the age of 15 and the accused was no more than 5 years older than that person OR if the young person was of or above the age of 12 and the accused was no more than 3 years older than that person Section 14A – mistaken belief that young person consented (regarding s 124 offences) A mistaken belief by the accused as to the existence of consent is not honest or reasonable if the accused was if the accused was self-intoxicated, reckless or did not take reasonable steps to ascertain that the complainant was consenting to the act. Section 14B – mistaken belief as to age of young person In respect of a s 124 offence for a young person aged more than 13 but under 17 years old, a mistaken belief by the accused as to the age of the young person is not reasonable if they did not take all reasonable steps to ascertain the age of the person or the accused was self-intoxicated.	No legislative definition of consent. Consent means free agreement. A person does not freely agree if they are pressured or threatened, if they are asleep or unconscious, or if they do not say or do anything to communicate consent: (Youth Law Australia, 2024) Applies to both children and adults.
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VIC	16 years	<u>Crimes Act 1958 (Section 49B and 49D)</u> S 49U - Exception for sexual assault or committing sexual act in presence of child: if at the time the child is 12 or older and the accused is no more than 2 years older than the child. S 49V - Exception for sexual penetration of child: if at the time the child was 12 or older, the accused was no more than 2 years older than the child, and the child consented to the act.	<u>Crimes Act 1958 (Section 34AG)</u> Consent means free and voluntary agreement. A person does not consent to an act just because they do not resist the act verbally or physically. A person does not consent to an act just because they consent to: • A different act with the same person; or • The same act with the same person at a different time or place; or • The same act with a different person; or • A different act with a different person. Applies to both children and adults.
WA	16 years	<u>Criminal Code Act Compilation Act 1913 (Section 321)</u> Exception/defence: if the young person is 13-16 years old; or the other person believed they were 16 AND person not more than 3 years older	<u>Criminal Code Act Compilation Act 1913 (Section 319)</u> Consent means a consent freely and voluntarily given and, without in any way affecting the meaning attributable to those words, a consent is not freely and voluntarily given if it is obtained by force, threat, intimidation, deceit, or any fraudulent means. Applies to both children and adults.

Additional provisions relating to a relationship of special care applying to young people of the following ages:

Vic (16-18) ACT (16-17) NSW (16-18) SA (17-18) WA (16-18)

State	Law	Exceptions
NSW	<u>Crimes Act 1900</u> 73 Sexual intercourse—young person between 16 and 18 under special care - Any person who has sexual intercourse with a young person who— - Is under his or her special care, and - is of or above the age of 16 years and under the age of 17 years, is liable to imprisonment for 8 years. - Any person who has sexual intercourse with a young person who— - is under his or her special care, and - is of or above the age of 17 years and under the age of 18 years, is liable to imprisonment for 4 years. 73A Sexual touching—young person between 16 and 18 under special care - Same application, but includes carer encouraging peer abuse and contact abuse	S 73(5) – No offence if the young person at the time of the offence was married to the older party S 80AG - Defense of similar age - it is a defense to 73 or 73A if the complainant is of or above the age of 14 years and the age difference between the complainant and the accused person is no more than 2 years.
ACT	<u>Crimes Act 1900 (Section 55A)</u> <u>Sexual intercourse with young person under special care</u> (1) A person commits an offence if – - the person engages in sexual intercourse with a young person; and - the young person is under the person's special care.	(3) Subsection (1) does not apply to a person if the person— - was married to the young person at the time of the alleged offence; or - is not more than 2 years older than the young person. (4) It is a defence ... if the defendant proves that the defendant believed on reasonable grounds that the young person was at least 16 years of age.

State	Law	Exceptions
NT	<u>Criminal Code Act 1983</u> Division 4 - Sexual acts committed against young persons by persons in positions of authority S 208K 1. A person commits an offence if: 1. The person is in a position of authority in relation to another person and is reckless in relation to that circumstance; and 2. The person intentionally engages in sexual intercourse with the other person; and 3. The other person is 16 or 17 years old S 208KD – Consent is not a defence 208GC Meaning of position of authority – same as other states generally.	208KE Defence – marriage or de facto relationship
SA	<u>Criminal Law Consolidation Act 1935</u> 57—Consent no defence in certain cases 1. Subject to subsection (1a), a person under the age of 18 years will be taken not to be capable of consenting to an indecent assault committed by a person who is in a position of authority in relation to the person.	(1a) Despite subsection (1), the alleged victim's consent will be a defence to a charge of indecent assault if the accused was a person of a class described in subsection (4)(c) in relation to the alleged victim and proves that— 1. alleged victim was, on the day on which the offence is alleged to have occurred, of or above the age of 17 years; and 2. the accused— i. was, on that day, under the age of 18 years; or ii. believed on reasonable grounds that the alleged victim was, on that day, of or above the age of 18 years.

State	Law	Exceptions
VIC	<u>Crimes Act 1958</u> S 49C - Sexual penetration of a child aged 16 or 17 under care, supervision or authority 1. A person commits an offence if - ... 1. ... 2. B (alleged victim) is i. A child aged 16 or 17 years; and ii. Under A's care, supervision or authority. S 49E – sexual assault of a child aged 16 or 17 under care, supervision or authority 1. ... 2. ... 3. Whether or not the touching is contrary to community standards of acceptable conduct depends on the circumstances. (4) For the purposes of subsection (3)— (b) the circumstances do not include i. whether B consents to the touching; or ii. whether A believes that B consents to the touching.	S 49X – Defence – reasonable belief as to age 1. It is a defence to charge for an offence against section 49C(1), 49E(1), 49G(1) or 49L(1) if, at the time of the conduct constituting the offence, A reasonably believed that B was 18 years of age or more 49Z – Defences to offences against aged 16 or 17 – reasonable belief as to marriage or domestic partnership 1. It is a defence ... if a) A reasonably believed that A and B were married to each other b) A i. Was not more than 5 years older than B and ii. Reasonably believed that A was B's domestic partner and that the domestic partnership commenced before B came under A's care, supervision or authority 49ZA - Defences to offences against children aged 16 or 17—reasonable belief as to care, supervision or authority 1. It is a defence to a charge for an offence At the time conduct constituting the offence, A reasonably believed that B was not under A's care, supervision or authority. 2. It is a defence to a charge for an offence against section 49I(1) if, at the time of the conduct constituting the offence, A reasonably believed that C was not under A's care, supervision or authority.

State	Law	Exceptions
QLD	<u>Criminal Code Act 1899</u> The <i>Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024</i> was assented to in September 2024. It introduced introduces section 210A, which criminalises sexual acts with a child aged 16 or 17 when the offender is in a position of care, supervision, or authority over the child. The law is not yet operational until the Queensland Government formally announces the start date and amendments are made to the Criminal Code.	
TAS	<u>CRIMINAL CODE ACT 1924 - SECT 124A</u> Penetrative sexual abuse of child or young person by person in position of authority (3) Consent to sexual intercourse is not a defence to a charge under this section.	(4) Consent ... is not a defence other than... where the age difference between the accused and the complainant is not more than 2 years (5) This section does not apply to sexual intercourse between persons who are married to each other.

WA	<u>Criminal Code Act Compilation Act 1913</u> 322.Child of or over 16, sexual offences against by person in authority etc.	(7) It is no defence under this section to prove the accused believed on reasonable grounds that the child was of or over 18 years old. (8) It is a defence to a charge under this section to prove the accused person was lawfully married to the child.
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