

Legal Age of Consent

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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 OR the other person honestly believed young person over 16.	<p>'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))</p> <p>Applies to both children and adults.</p> <p><u>Crimes Act 1900 s 67</u> – when a person does not consent to an act.</p>
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)	<p><u>Crimes Act 1900 (Section 61HI)</u></p> <p>A person consents to sexual activity if, at the time of the sexual activity, the person freely and voluntarily agrees to the sexual activity.</p> <p>Applies to both children and adults.</p>
NT	16 years	<u>Criminal Code Act 1983 (Section 208J)</u> Exception/defence: if there is less than 2 years age difference between the two young persons.	<p><u>Criminal Code Act 1983 (Section 208GA)</u> Consent to a sexual act means free and voluntary agreement to the act.</p> <p>Applies to both children and adults.</p>

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 honestly and genuinely believed the other person 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: <ul style="list-style-type: none"> • 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 reasonably believed 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 (Schedule 1, Section 124)</u> Exception/defence: if the young person is 12-14 years old; or the other person is no more than 3 years older or above the age of 15.	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)</u> Exception/defence: if the young person is 12-15 years old and the age difference between the other person is no more than 2 years (section 49V)	<u>Crimes Act 1958 (Section 49B)</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: <ul style="list-style-type: none"> • 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.

Special care Vic (16-18), ACT (16-17), NSW (16-18), SA (17-18) WA (16-18)

State	Law	Exceptions
NSW	<p>Crimes Act 1900</p> <p>73 Sexual intercourse—young person between 16 and 18 under special care</p> <ol style="list-style-type: none"> Any person who has sexual intercourse with a young person who— <ol style="list-style-type: none"> 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— <ol style="list-style-type: none"> 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. <p>73A Sexual touching—young person between 16 and 18 under special care</p> <ul style="list-style-type: none"> Same application, but includes carer encouraging peer abuse and contact abuse 	<p>S 73(5) – No offence if the young person at the time of the offense was married to the older party</p>
ACT	<p>Crimes Act 1900 (Section 55A)</p> <p>Sexual intercourse with young person under special care 16 - 18</p> <p>(1) A person commits an offence if –</p> <ol style="list-style-type: none"> the person engages in sexual intercourse with a young person; and the young person is under the person's special care. 	<p>(3) Subsection (1) does not apply to a person if the person—</p> <ol style="list-style-type: none"> 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.

State	Law	Exceptions
NT	<p>Criminal Code Act 1983</p> <p>Division 4 - Sexual acts committed against young persons by persons in positions of authority</p> <p>S 208K</p> <p>1. A person commits an offence if:</p> <ol style="list-style-type: none"> 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 <p>S 208KD – Consent is not a defence</p> <p>208GC Meaning of position of authority – same as other states generally.</p>	<p>208KE Defence – marriage or de facto relationship</p>
SA	<p>Criminal Law Consolidation Act 1935</p> <p>57—Consent no defence in certain cases</p> <p>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.</p>	<p>(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—</p> <ol style="list-style-type: none"> 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— <ol style="list-style-type: none"> 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	<p>Crimes Act 1958</p> <p>S 49C - Sexual penetration of a child aged 16 or 17 under care, supervision or authority</p> <ol style="list-style-type: none"> 1. A person commits an offence if - ... <ol style="list-style-type: none"> 1. ... 2. B (alleged victim) is <ol style="list-style-type: none"> i. A child aged 16 or 17 years; and ii. Under A's care, supervision or authority <p>S 49E – sexual assault of a child aged 16 or 17 under car, supervision or authority</p> <ol style="list-style-type: none"> 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)— <ol style="list-style-type: none"> (b) the circumstances do not include <ol style="list-style-type: none"> i. whether B consents to the touching; or ii. whether A believes that B consents to the touching. 	
WA	<p>Criminal Code Act Compilation Act 1913</p> <p>322.Child of or over 16, sexual offences against by person in authority etc.</p>	<p>(8) It is a defence to a charge under this section to prove the accused person was lawfully married to the child.</p>

State	Law	Exceptions
QLD**	<p>217 PROCURING YOUNG PERSON ETC. FOR PENILE INTERCOURSE</p> <p>1. A person who procures a person who is not an adult or is a person with an impairment of the mind to engage in penile intercourse (either in Queensland or elsewhere) commits a crime.</p> <p>No specific mention of 'special care' is made in the legislation for these states.</p>	
TAS	<p>CRIMINAL CODE 1924 - SECT 124A</p> <p>Penetrative sexual abuse of child or young person by person in position of authority</p> <p>(3) Consent to sexual intercourse is not a defence to a charge under this section.</p>	<p>(4) This section does not apply to sexual intercourse between persons who are married to each other.</p>