



Learning Works

Some related background reading and points for discussion

Discussion Starter 2: Age of Consent

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These research notes are of a general nature, and are provided only as background and as discussion starters. Readers should check the relevant laws in their own state or territory.

Background:

A person is considered capable of consenting to sexual intercourse when they are 17 or older. If a person aged 17 or older has sexual intercourse with a person aged 16 or younger, it is an offence under the *Criminal Law Consolidation Act 1935* (SA), whether the younger person consents or not. However, it is a defence if the person believed their partner was 17 or older, and this belief was based on reasonable grounds. An exception applies where both partners are 16; they are then able to consent to sexual intercourse with each other. Another exception applies if the partners are married to each other – it is not an offence for a person over the age of 17 to have sexual intercourse with a spouse under the age of 17.

Where both partners are underage, it is less clear when consent is considered real and informed. Consideration will be given to the age gap between the partners; a larger age gap will mean it is less likely that consent is acceptable. The capacity of the partners to consent to sex will be taken into account, including any mental or physical illness, or other health issues. Furthermore, if the parents of the young partners know about the sexual relationship and do not consider it unsuitable, this will be a significant factor in determining whether consent can be given.¹

It is against the law for a person in a position of authority, such as a teacher or guardian, to have sexual intercourse with a person under the age of 18. Therefore, although a 17 year old is generally considered capable of consenting to sexual intercourse, they cannot legally consent where their partner is in a position of authority.

Issues:

- Many young people feel as though they are ready to engage in sexual intercourse before the age of 17
- It may be more difficult to educate young people as to the possible risks of engaging in sexual intercourse if they feel they have to do so “behind their parents’ backs”
- Young people may not be aware of the laws regarding consent and the possible consequences of breaching the law
- It is not an offence for a person under the age of 17 to consent to sexual intercourse with a person aged 17 or older, but the older person will have committed an offence – may have implications for 17 year olds if they are pressured by younger partners
- Some teenagers mature faster than others – it can be difficult to tell how old someone is, and people may not be honest about it

¹http://www.decs.sa.gov.au/speced2/a8_publish/modules/publish/content.asp?id=25658&navgrp=2305#ageConsent

Questions:

- What if a person aged under 17 thinks they are capable of consenting?
- What can a young person do if they are being pressured into having sex?
- What if two 16 year olds are in a relationship, and one turns 17?
- What constitutes “sexual intercourse”?
- What are the penalties for having sexual intercourse before the age of 17?
- What would be considered “reasonable grounds” for believing someone is 17 or older?
- What should a parent do if they believe their child is engaging in sexual intercourse, either when they are too young to give consent, or with another person who is too young to give consent?

Further Information:

Criminal Law Consolidation Act 1935 (SA)

Families SA – For Young People, at:

<http://www.familiesandcommunities.sa.gov.au/Default.aspx?tabid=630>

Sex and Your Health, at

<http://www.ama.com.au/youth/code/sex.html>

Sexual Relationships and Age of Consent, at

<http://www.lawhandbook.sa.gov.au/ch05s02s10.php>

Department of Education and Children’s Services – Frequently Asked Questions, at:

http://www.decs.sa.gov.au/speced2/a8_publish/modules/publish/content.asp?id=25658&navgrp=2305#ageConsent

Children, Youth and Women’s Health Services – Young Adult Health, at:

<http://www.cyh.com.au/SubDefault.aspx?p=160>