

Topic 8 — Consent and the Law

Introduction

The focus of this session is to help students understand the legal definition of consent, the process of consent, and what their responsibilities and rights are in giving and obtaining consent. There is a strong likelihood that some of your students would not understand that being frightened or intimidated into sex constitutes sexual coercion (because rape is assumed to be more physically violent and something done by a stranger). This session has the potential to be upsetting for some as they reflect on their own experiences. Let your class know that sexual assault is the topic so that they can opt out if necessary. If you are worried or anxious because of an experience in your life, you may be able to find a fellow teacher to support you, or invite a relevant service into the school to run this session for the students.

Many Australians are survivors of **sexual assault**. An estimated 1.3 million women and 362,400 men experienced an incident of sexual assault since the age of 15 (ABS, 2006). This approximately translates to 1 in 6 women and 1 in 20 men. A greater proportion of women than men report experiencing sexual violence in the context of intimate partner relationships (ABS, 2006).

Almost 1 million women (956,600, or 12%) reported having experienced **sexual abuse** before the age of 15. More than 90% of victims knew the perpetrator (ABS, 2006).

Of male respondents, 337,400 reported experiencing sexual abuse before the age of 15. Again, more than 80% of male victims knew the perpetrator. Two thirds of all respondents (67.6%) reported being sexually abused before the age of 11.

You may find an officer from the Sexual Offences and Child Abuse Units in your state or territory who would be willing to come and speak to the students. Two useful websites are <http://www.lawstuff.org.au> and <http://www.yoursexualhealth.org.au>, both of which are designed for young people and can be used to help students research the information.

It's important that the students understand that the laws are different between states. Go to www.lawstuff.org.au for a student-friendly explanation of the laws in your state.

Activity

1. Is it legal?

Time

40 minutes

Handouts

- *H1: is it legal?*
- *H2: Consent and the law*

Background material

B1: Consent and the law

ACTIVITY 1: IS IT LEGAL?

Time: 40 minutes

Overview: It is important that young people have the opportunity to know the laws about sex – particularly the ages of consent (as some young people may unwittingly be breaking the law if they have sex with a child or young person over 24 months younger), as well as to understand the legal definition of consent. Many young people ask for clarity on this topic.

Key Messages

- Understanding the laws helps to prevent sexual assault from occurring.
- Even though asking someone whether they're comfortable or want sex can be very embarrassing and might mean sex doesn't happen that time, asking is important to prevent sexual assault.
- If a person says 'yes' but they were too frightened to say no, then it is not consent.
- It is the responsibility of the person asking/wanting sex to make sure they know that the other person wants sex too.

Preparation and Materials

- Copies of *H1: is it legal?* 1 per student
- *H2: Consent and the law*
- Download current information from your state or territory on the legal definitions of 'consent' and 'sexual assault'. Go to www.lawstuff.org.au
- Pamphlets or websites for young people about sexual assault and counseling services in your area. Go to <http://au.reachout.com/sexual-assault-support> for your state's services.

Method

1. Over the last few weeks we have talked about an ethical framework as something that might be useful in helping us have ethical, safe and pleasurable relationships. Our goal today is to help you gain some knowledge about the legal definition of sexual consent.
2. Issues to do with sexual consent can sometimes be difficult ones, as we reflect on our own and our friends' experiences. If anyone feels

uncomfortable you may need to take a break from the room. Before we go further let's check that you know who you could turn to if you wanted to check anything this session raises for you:

- Who is available in your networks to talk to?
 - Who is available at this school?
 - There are phone/online services you can call to check something out anonymously. If you were worried for example about whether a sexual relationship or incident is legal. I will also provide you with a copy of local support services at the end of the session for you or your friends.
3. Ask if anyone can explain what is meant by the word 'consent' (e.g. permission, agreement, wanting to do something).
 4. Explain that in relation to sex and sexual assault, consent = free agreement. Write this on the board and emphasise that it means both people are doing things because they want to, not because they feel forced.
 - Distribute the worksheet *H2: Consent and the law*
 5. Students can go to www.lawstuff.org.au on the laws in your state to answer questions.
 6. Ask the students:
 - Why do you think the 24-month rule applies and who is it trying to protect?
 - Why do you think there are laws about guardians and people in authority?
 7. Alternatively, use the guest speaker to cover these issues with students or get students to access www.lawstuff.org.au or www.yoursexualhealth.org.au and find answers to the questions.
 8. Ask the students if they have any questions about these laws or if they can think of situations that they are unsure about.
 9. **HOMEWORK** This session has focused on consent and the law. Ask students to find out the laws regarding these issues in your state or territory:
 - What are the laws regarding taking and sending images of people under the age of 18.
 - At what age is it legal for a person to get access to contraception from a doctor?

H1: IS IT LEGAL?

1. Is it legal for the following pairs of people to have a sexual relationship and why/why not:

- 13 and 15 years old? _____
- 9 and 11 years old? _____
- 20 and 18 years old? _____
- 15 and 16 years old? _____
- 13 and 15 1/2 years old? _____

2. Is sexual contact a criminal offence between a young person and a family member? (The definition of 'family' here, is your parent, your grandparent, brother, sister and half- brother or half-sister, and being a family member from birth.)

3. Are doctors able to have a sexual relationship with their patients?

4. Can a teacher have a sexual relationship with a student?

5. Is it a criminal offence to have sex with a person who has passed out from drinking?

6. What if a person is frightened the other person will get angry if they say no. Is this legal? Is it right?

Age of consent laws are designed to protect children and young people from sexual exploitation and abuse.

The legal age for consensual sex varies across Australian state and territory jurisdictions but is mostly the same for people who are straight, same sex attracted or bisexual sex and applies to people of all genders.

- The age of consent is 16 years of age in the ACT, NT, VIC, WA.
- The age of consent is 17 years of age in TAS and SA.
- QLD is the only state that makes a distinction between different forms of sexual activity and the age of consent. In Queensland, the age of consent for anal sex is 18 years of age, while the age of consent for all other sexual behaviour is 16 years of age.

H2: CONSENT AND THE LAW

What is 'sexual assault'?

Sexual assault includes rape, incest, child abuse, and unwanted sexual behaviour, for example, unwanted kissing and touching. If you do not agree to the act, it is rape whatever the relationship between you and the other person. It also includes behaviour that does not involve actual touching. For example, forcing someone to watch pornography or masturbation is also sexual assault.

Both women and men are more likely to experience sexual violence from someone they know, rather than a stranger. For women, it most likely to be a boyfriend/girlfriend or date. For men, the most likely type of known perpetrator of sexual violence is an acquaintance or neighbour.

A person can only give free agreement (or 'consent') to sex if they are:

The right age: They must be old enough to make sexual decisions.

Sober: If someone is drunk, stoned or out of it, their ability to make decisions is impaired, so they're not really able to give consent.

Mentally and physically able: A person has to have the mental ability to make decisions and the physical ability to communicate their desires.

The law says it's not really 'free agreement' if:

1. A person says yes because of force, fear or fraud.
2. A person says yes because of the fear of harm of any type for themselves or someone else.
3. A person says yes because of being unlawfully held against their will, or trapped.
4. A person is asleep, unconscious or so affected by alcohol or another drug that they are incapable of freely consenting.
5. A person is incapable of understanding the sexual nature of the act.
6. A person is mistaken about the sexual nature of the act and the identity of the person.
7. A person is mistaken in the belief that the act is for medical and or hygienic purposes. For further information about age and consent,

In legal terms, what is 'sex'?

Having sex is anything that involves:

- a penis touching a vagina, anus or mouth
- an object or another part of the body coming into contact with the vagina or anus
- touching a person in a sexual way, such as touching another person's vagina, penis, anus or breasts.

More information about the law:

- Lawstuff Australia <http://www.lawstuff.org.au>
- Youth Law <http://youthlaw.asn.au/resources/other-useful-information-and-websites/>

Sexual assault support:

There are a number of services available for you regardless of where you live in Australia.

National services like 1800 RESPECT can support you no matter what state or territory you are in.

1800 RESPECT (1800 737 732)

Sexual Assault, Family & Domestic Violence counselling phone and webchat.
Free 24/7

1800respect.org.au

OR GO TO <http://au.reachout.com/sexual-assault-support> to find out your state's support services.

B1: CONSENT AND THE LAW¹

A person does not freely agree if:

1. 'They submit because of force, fear or fraud.'

Example: Someone has threatened to physically hurt them if they don't go through with it, so they cooperate to avoid that harm.

2. 'They submit because of the fear of harm of any type for themselves or someone else.'

Example: Someone in the family who is sexually assaulting a teenage girl may tell her if she doesn't do what he wants, he will do things to her little sister, so she says yes.

3. 'They submit because of being unlawfully detained.'

Example: Someone might be locked in a room and told they're not allowed to leave until they have sex with a person, so they do it.

4. 'They are asleep, unconscious or so affected by alcohol or another drug as to be incapable of freely consenting.'

Example: If someone has passed out from drinking and someone does things to them, including having sex, the person who has passed out is not able to give consent so it's an offence.

5. 'They are incapable of understanding the sexual nature of the act.'

Example: They are children or mentally challenged and cannot understand that what's being done is sexual.

6. 'They are mistaken or unaware about the sexual nature of the act and the identity of the person.'

Example: Two brothers look very alike and are nearly the same age. One of them brings a girl home and sleeps with her, and during the night while she's asleep the brothers swap places. In the morning the girl has sex with the second brother, thinking he's the first brother. Both brothers end up being charged with sexual assault.

7. 'They are mistaken in the belief that the act is for medical or hygienic purposes.' Example: If a doctor or nurse makes you do something unnecessary but makes you believe it is necessary (e.g. making you take your clothes off when you only have a chest infection).

References for this section

Australian Bureau of Statistics. (2006). Personal Safety Survey 2005. Canberra: Australian Bureau of Statistics.

State of Victoria Department of Education and Early Childhood Development. (2014). Building Respectful Relationships: Stepping Out Against Gender-Based Violence. Melbourne: Department of Education and Early Childhood Development.