

TEACHERS MATERIALS

MODULE: SEX AND CONSENT – NSW – YEARS 9-10 - FOLLOW UP MODULE

Thank you for your interest in TeachLaw! We hope that these materials are relevant and helpful to your students in educating them on their legal rights. For any correction or questions, please e-mail Youth Law Australia at admin@yla.org.au and include the word “TeachLaw” and the name of the module in the subject line.

TeachLaw Modules contain 3 parts – Teacher materials, Student materials and a PowerPoint presentation. Please note the PowerPoint is provided in PDF to preserve formatting. To present, please open using a PDF viewer, go to View > Enter Full Screen and use the arrow buttons to navigate.

This is a “follow-up” module that is designed to refresh student memory and determine if long term knowledge and understanding has changed. Follow-up lessons are designed to contain very brief direct instruction sections. The bulk of the lessons is designed to be activity/group-based.

This document is divided into 3 parts

Part 1: Background information – this section contains briefing notes to provide you with information on what the law says.

Part 2: Lesson notes – this section contains suggested speaking points, timings and important notes about the presentation.

Part 3: Student activities – this section contains the suggested class activities and answers to any student handouts.

Curriculum links

- PDHPE (Year 11 & 12) – Module 1: Growth and Development – “1.11 Demonstrates understanding of possible consequences of a range of sexual activities and knows how to seek advice or assistance if necessary”

Learning Objectives

- 1.1 Students define the terms “consent”, “age of consent”, and “sexual intercourse” and identify relevant laws
- 1.2 Students demonstrate change in behaviour

Part 1 – Background information

1. INTRODUCTION

Young people may find navigating laws on sexual activity in NSW confusing. This module is designed to explain the different laws on sexual **intercourse** and how they apply to young people so that they can make informed decisions about engaging in sexual intercourse. It is noted that this module is not designed to replace seeking professional advice. Young people who are considering engaging in sexual intercourse should speak to a professional to understand the health and legal consequences for engaging in sexual activity. Please note this module does not cover other kinds of sexual activity or behavior.

The laws in NSW around the age of consent are designed to protect young people from the harm that they may experience from being taken advantage of when engaging in sexual intercourse.¹ Age of consent laws recognise that in some cases (e.g. due to age or a person's position of authority) full consent cannot be given due to the imbalance of power.

Young people are encouraged to understand the consequences of engaging in sexual activity at different ages, and know where to turn for help if they are unsure if something is safe or legal.

2. DEFINING CONSENT

Consent is defined as “full and voluntary agreement”.² It is against the law for a person to engage in sexual activity with another person if they do not give their consent. To understand when and how consent must be obtained, the following scenarios have been constructed. In each scenario, Person A is considered to be the person trying to engage in sexual activity, and Person B is considered to be the person who Person A is intending to engage in sexual activity with. The following laws of consent also apply to a situation where Person A tries to make Person B have sex with a third party.

Scenario 1: Actual knowledge³

¹ <https://www.parliament.nsw.gov.au/researchpapers/Pages/the-age-of-consent.aspx>

² s 61HE(2) Crimes Act 1900 (NSW)

³ s 61HE(3)(a) Crimes Act 1900 (NSW)

It is unlawful for Person A to engage in sexual activity with Person B knowing that they have not given consent.

Scenario 2: Reckless knowledge⁴

It is unlawful for Person A to engage in sexual activity with Person B in a way that is reckless to the possibility that they have not consented.

Scenario 3: Reasonable basis⁵

It is unlawful for Person A to engage in sexual activity with Person B if they have no reason to believe Person B has given consent.

Scenario 4: Mistaken belief⁶

It is unlawful for Person A to engage in sexual activity with Person B, knowing they have only given consent due to a mistaken belief.

In deciding whether or not consent has been obtained, the Court will consider what steps Person A took to determine if Person B gave consent.⁷ Person A cannot use self-induced intoxication as an excuse for not taking reasonable steps to obtain consent.⁸ Also, Person A cannot use a lack of physical resistance by Person B as proof of consent.⁹

In addition to the above, consent cannot be given in the following circumstances:

- If Person B does not have the capacity to consent due to age;¹⁰
- If Person B does not have the capacity to consent due to cognitive understanding¹¹ e.g. if they have an intellectual disability, developmental disorder, neurological disorder, dementia, severe mental illness, or a brain injury that causes them to require supervision or access to services to enable independence (known as “social habilitation”);¹²
- If Person B is asleep or unconscious;¹³

⁴ s 61HE(3)(b) Crimes Act 1900 (NSW)

⁵ s 61HE(3)(c) Crimes Act 1900 (NSW)

⁶ s 61HE(7) Crimes Act 1900 (NSW)

⁷ s 61HE(4)(a) Crimes Act 1900 (NSW)

⁸ s 61HE(4)(b) Crimes Act 1900 (NSW)

⁹ s 61HE(9) Crimes Act 1900 (NSW)

¹⁰ s 61HE(5)(a) Crimes Act 1900 (NSW)

¹¹ s 61HE(5)(a) Crimes Act 1900 (NSW)

¹² s 61HD Crimes Act 1900 (NSW)

¹³ s 61HE(5)(b) Crimes Act 1900 (NSW)



- If Person B is forced to have sex with Person A due to a threat of force, fear¹⁴ or because they are being kept against their will;¹⁵
- If Person B has a mistaken belief about the identity of Person A,¹⁶ mistakenly believes they are married to Person A,¹⁷ or mistakenly believes that the sexual activity is necessary for health or hygiene reasons;¹⁸ or
- If Person B is tricked into engaging in sexual activity through a mistaken belief about the nature of the sexual activity.¹⁹

Finally, Person B might use one of the following reasons to demonstrate that they did not give consent:

- they were substantially intoxicated by drugs and/or alcohol;²⁰
- they were intimidated, coerced or threatened in some other way than by force;²¹ or
- Person A used their position of power or trust to force Person B to engage in sexual activity.²²

These three reasons are different to the scenarios listed above as, in these cases, it is up to Person B to *prove* that they did not give consent for one of these reasons, whereas in the above scenarios, consent is *automatically assumed to be negated*²³.

3. DEFINING SEX

In NSW, different laws apply to different kinds of sexual activity. This means that what a young person might not consider to be “sex” might be classified as sex according to the law. For this reason, it is important to understand the different terminology in use.

“Sexual intercourse” is defined as the penetration of any part of a body of one person (known as Person A), or an object manipulated by Person A into another person’s vagina (including a surgically constructed vagina) or anus (known as Person B). Sexual intercourse also includes oral sex e.g. if any part of the penis of one person (known as Person A) is introduced into the mouth of another person (known as Person B), or performing oral sex on a female’s genitalia.²⁴ **This module deals only with this kind of sexual activity.**

¹⁴ s 61HE(5)(c) Crimes Act 1900 (NSW)

¹⁵ s 61HE(5)(d) Crimes Act 1900 (NSW)

¹⁶ s 61HE(6)(a) Crimes Act 1900 (NSW)

¹⁷ s 61HE(6)(b) Crimes Act 1900 (NSW)

¹⁸ s 61HE(6)(c) Crimes Act 1900 (NSW)

¹⁹ s 61HE(6)(d) Crimes Act 1900 (NSW)

²⁰ s 61HE(8)(a) Crimes Act 1900 (NSW)

²¹ s 61HE(8)(b) Crimes Act 1900 (NSW)

²² s 61HE(8)(c) Crimes Act 1900 (NSW)

²³ s 61HE(5),(6),(8) Crimes Act 1900 (NSW)

²⁴ s 61HA Crimes Act 1900 (NSW)



“Sexual touching” is when one person (known as Person A) touches another person (known as Person B) in a way that would be considered sexual. It includes when Person A touches Person B with any part of their body, or anything else, including if Person A or B are wearing something over the top of where they are being touched.²⁵ To determine if something is sexual, the following things must be considered:

- if the touching involved a person’s genitals, anal area or breasts;
- if the touching was done to obtain sexual arousal or gratification; and
- the circumstances of the touching.²⁶

A “sexual act” refers to an act other than touching, but may be considered sexual due to the area involved in the act (i.e. genitalia, anal area, breasts,), the reason for the act (i.e. sexual arousal or gratification) or the circumstances of the act.²⁷

It will not be considered sexual intercourse, sexual touching or a sexual act if it was carried out for proper medical purposes.²⁸

4. AGE OF CONSENT

The age of consent is the age at which the law says a person can legally agree to engage in sexual intercourse. If an adult tries to engage in sexual intercourse with someone under the age of consent, they have broken the law.²⁹

In NSW, the age of consent is 16 years old.³⁰ There are a few exceptions to this rule, and defences are available to two young people under the age of 16 who freely agree to engage in sexual intercourse with each other. These are outlined under B. DEFENCES below.

A. POSITION OF CARE OR AUTHORITY

Whilst the age of consent is 16 years old, this will change if one of the two people have a position of care or authority over the other. If Person A is in a position of care or authority over Person B, it is illegal for Person A to engage in sexual intercourse with Person B until they are 18 years old³¹.

²⁵ s 61HB(1) Crimes Act 1900 (NSW)

²⁶ s 61HB(2) Crimes Act 1900 (NSW)

²⁷ s 61HD Crimes Act 1900 (NSW)

²⁸ s 61HA(a), s 61HB(3), s 61HC(3) Crimes Act 1900 (NSW)

²⁹ s 66A- s 66DE Crimes Act 1900 (NSW)

³⁰ s 66A- s 66DE Crimes Act 1900 (NSW)

³¹ s 73, s 73A Crimes Act 1900 (NSW)

Examples of care or authority relationships include if Person A is:

- a parent, guardian, step-parent or authorised carer to Person B or is the de facto partner of Person B's parent/guardian/authorised carer;³²
- a teacher or staff member at the school where Person B is attending school;³³
- a religious leader, sporting coach, musical tutor or other kind of coach, tutor, leader or instructor to Person B;³⁴
- a custodial officer and Person B is an inmate;³⁵
- a health professional and Person B is their patient.³⁶

B. DEFENCES

Even though the age of consent is technically 16 in NSW, if two young people are aged above 14 years old and less than two years apart in age, they can agree to engage in sexual intercourse with each other and will not be found guilty of breaking age of consent laws.³⁷ This also applies to situations where one person is in a position of care or authority over another person.³⁸

C. OTHER LAWS ON SEXUAL ACTIVITY

Below are some of the common laws governing sexual activity which young people should be aware of. This list is by no means exhaustive and if a young person is ever concerned they have broken the law they should speak to a lawyer immediately.

In NSW it is illegal to:

- have sexual intercourse with another person without their consent (including if a third party is involved);³⁹
- have sexual intercourse with a person under the age of consent⁴⁰ (unless a defence applies);⁴¹
- sexually touch another person without their consent (including if a third party is involved);⁴²

³² s 73(3)(a) Crimes Act 1900 (NSW)

³³ s 73(3)(b) Crimes Act 1900 (NSW)

³⁴ s 73(3)(c) Crimes Act 1900 (NSW)

³⁵ s 73(3)(d) Crimes Act 1900 (NSW)

³⁶ s 73(3)(e) Crimes Act 1900 (NSW)

³⁷ s 80AG(1) Crimes Act 1900 (NSW)

³⁸ s 80AG(1) Crimes Act 1900 (NSW)

³⁹ s 61I Crimes Act 1900 (NSW)

⁴⁰ s 66C Crimes Act 1900 (NSW)

⁴¹ s 80AG Crimes Act 1900 (NSW)

⁴² ss 61KC-61KD Crimes Act 1900 (NSW)



- sexually touch a person under the age of consent⁴³ (unless a defence applies)⁴⁴;
- perform a sexual act on another person without their consent (including if a third party is involved);⁴⁵ or
- perform a sexual act on a person under the age of consent⁴⁶ (unless a defence applies).⁴⁷

More serious penalties may apply if the sexual activity is done in a way that inflicts harm on someone else.⁴⁸

In addition to the criminal laws on sexual activity, there are additional laws that may apply in the workplace or at school that make it illegal to sexually harass another person. These laws fall outside the scope of this module.

For more information, check out YLA's page on sexual harassment [here](#).

There are also laws that govern the sharing of intimate or sexual images between young people. For more information, check out YLA's pages on sexting [here](#).

5. CONSEQUENCES FOR BREAKING THE LAW

There are legal outcomes for people who break the existing laws. These can include a criminal record and going to jail, as well as risk of registration on the NSW Child Protection Register (registration as a sex offender).

Some of the penalties for the relevant offences are listed below. Note that each case will have mitigating and aggravating factors specific to them that influence the penalties, as well as being influenced by relevant defences- such as the defence of similar age.

A. PENALTIES FOR SEXUAL INTERCOURSE AND ASSAULT OFFENCES⁴⁹

- Any person who has sexual intercourse with a child under 10 faces a maximum penalty of imprisonment for life. Any person who attempts to have sexual intercourse with a child who is under the age of 10 years or assaults them with the intent of having sexual intercourse faces a penalty of 25 years.

⁴³ s 66DB Crimes Act 1900 (NSW)

⁴⁴ s 80AG Crimes Act 1900 (NSW)

⁴⁵ s 61KE Crimes Act 1900 (NSW)

⁴⁶ s 66DD Crimes Act 1900 (NSW)

⁴⁷ s 80AG Crimes Act 1900 (NSW)

⁴⁸ Pt 3, Division 10, Subdivision 2-7 (see aggravated) Crimes Act 1900 (NSW)

⁴⁹ s 66A- s 66DE Crimes Act 1900 (NSW)

- If the child is aged 10 and under 14, the person is liable to 16 years imprisonment. This penalty is 20 years in circumstances of aggravation. (e.g. inflicted actual bodily harm, offence committed in company, offender is in a position of authority, victim is physically or cognitively disabled or impaired etc.).
- If the child is aged 14 and under 16, the person is liable to 10 years imprisonment. This penalty is 12 years in aggravated circumstances.
- Any person who assaults a child who is 10 years and above, and under the age of 16, with intent to have sexual intercourse is liable to the relevant penalties above.

B. PENALTIES FOR SEXUAL ACT OFFENCES⁵⁰

- A person who sexually touches, incites sexual touching towards, or incites sexual touching from a child under the age of 10 years is liable to a maximum penalty of 16 years imprisonment.
- If the child is aged 10 or over, and under 16, the maximum penalty is 10 years imprisonment.
- A person who commits a sexual act, incites a sexual act towards, or incites a sexual act from a child under the age of 10 is liable to a maximum penalty of 7 years imprisonment.
- If the child is aged 10 or over, and is under 16, the penalty is 2 years imprisonment.
- In circumstances of aggravation, this penalty becomes imprisonment for 5 years.

C. PENALTIES FOR SEXUAL OFFENCES INVOLVING SPECIAL CARE⁵¹

- A person who has sexual intercourse with a young person who is under their special care and is aged 16 or above, but under the age of 17, is liable for imprisonment for 8 years.
- If the young person is or above the age of 17, but under the age of 18, the offender is liable for imprisonment for 4 years.
- A person who sexually touches, incites sexual touching towards, or incites sexual touching from a young person under their special care that is of or above 16, and under 17, is liable to 4 years imprisonment.
- If the young person is of or above 17, and under 18, the offender is liable to 2 years imprisonment.

By committing registrable offences, such as the above, a person opens themselves up to becoming a registered person on the NSW Child Protection Register. The consequences of

⁵⁰ s 66A- s 66DE Crimes Act 1900 (NSW)

⁵¹ s 73, s 73A Crimes Act 1900 (NSW)

this include being bound by reporting obligations, and many other restrictions on travel and other activities.⁵² There is legislation that allows for the discretion to treat child offenders as non-registrable if the person was under 18 at the time of the offence, is not a prior offender, is not subject to full-time detention or control order because of the offence, and does not pose a risk to children.⁵³ However, it is important to note that while there is discretion to make juvenile offenders non-registrable in some cases, this is not guaranteed.

6. SEXUAL HEALTH

Deciding to engage in sexual intercourse with someone is a big step. If a young person decides at any time that they do not want to continue, they have the right to say no and the other person **must** respect their choice. There are both physical and emotional risks in engaging in sexual intercourse. If a young person makes the decision to engage in sexual intercourse, it is important that they speak to a counsellor if they are concerned or they aren't sure if what is going on is healthy, or if it is impacting their emotional or mental wellbeing. Also, young people should be aware of the risks that are involved with unsafe or unprotected sex. These risks include:

- getting a sexually transmissible infection (STI) like chlamydia;
- getting a blood borne virus like HIV; or
- unplanned pregnancy.

7. SUPPORT SERVICES

Young people are encouraged to contact the following services for health-related support if they have been the victim of unwanted sexual contact, or if they are considering engaging in sexual activity:

- [Kids Helpline](#) provides free and private counselling to young people up to age 25. They can be contacted at any time, day or night on 1800 55 1800.
- [1800Respect](#) is a national helpline, providing counselling, information and support. They can be contacted on 1800 737 732, 24 hours a day, 7 days a week.
- [1800MYLINE](#) is a national helpline for people needing counselling advice or referrals to helpful services. They can be contacted on 1800 695 463, 24 hours a day, 7 days a week.
- [Family Planning NSW](#) runs a hotline to provide information, advice and options for issues including contraception, pregnancy, sexual health and health relationships. They can be contacted on 1300 658 886, Monday to Friday, 8.30am-5pm.

⁵² Child Protection (Offenders Registration) Act 2000 (NSW)

⁵³ Child Protection (Offenders Registration) Act 2000 (NSW) s 3C

For information on their legal rights and responsibilities, a young person can contact [Youth Law Australia](#). YLA is an online legal service that provides 24/7 legal assistance to children and young people aged under 25 and their supporters throughout all of Australia. Young people can access free legal information through their factsheets or access personalised legal advice and more specific help by pressing the pink "get help now" button located in the top right hand corner of the website.

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Part 2 – Lesson notes

Lesson details	
Duration	45 minutes – 1 hour
Classroom set up	Computer and Project Students should have their own devices (if this is not possible, please e-mail YLA at admin@yla.org.au for alternate lesson materials)
Materials	1 x Presentation (PDF) 1 x Teacher's materials – 1 copy for the teacher 1 x Student worksheet – 1 copy per student
Presentation details	There will be 12 slides in the presentation slide deck to support the delivery of this module. Slides may be printed and provided to students should they request supplementary information.

Slide and Timing	Speaking notes	Other notes
1 0.5 minutes	Today we will be completing a module developed by Youth Law Australia through their TeachLaw initiative on the topic of image based abuse. Youth Law Australia provides free legal information and help to children and young people under the age of 25. They do this through providing information factsheets on their website and specific legal advice through their e-mail service. All of the information in this presentation was developed and checked by lawyers to explain what the law says and should not be taken as legal advice. If you want to know how the law might apply to a specific situation in your life, you can contact Youth Law Australia for more help.	Student will need to complete the survey on slide 3 - the survey is designed to be two-part with the first part being completed at the start of the lesson, and the second part being completed and submitted at the end of the lesson. Please emphasise to students that they should complete page 1 and then minimise their screen - <i>they should not exit the survey nor should they complete page 2 at the start of the lesson</i> . This survey is important in assessing students' preliminary knowledge, and could be used as a starting discussion question/diagnostic assessment. We require the survey to be completed so that we can assess the effectiveness of TeachLaw materials and make modifications as necessary. If you are unable to complete the survey online, please visit this page to download the paper survey.
2 0.5 minutes	You can find out more about Youth Law Australia's services through their website www.yla.org.au or through their social media.	
3 1.5 minutes	To begin this lesson, please go to the URL on the screen and complete the first page of the survey. Do not go to the second page as we will do that at the end of class. Once you have completed the survey, please minimise the browser but don't close the survey!	
4 0.5 minutes	The lesson today will cover the topics listed on the screen. I want to acknowledge that some of the content we cover in this lesson might be awkward, uncomfortable, hurtful or might remind you of something that you or someone you know has	



	experienced and which could be upsetting to you. If, at any point in time, this content becomes too overwhelming, we can take a short break or you can put your hand up and ask to step out for a moment. This is a safe place and we should all agree not to talk about the issues that come up here with people outside of this classroom in a way that could make other people feel bad e.g. gossiping.	
5 5 minutes	To begin today's lesson we are going to do some brainstorming to see what we can remember from the last time we did this lesson. In small groups, see if you can remember what we learnt about the definitions of consent, age of consent and sex. You might also see if you can remember what laws we talked about or anything else that springs to mind from the last presentation.	You might consider making different posters that students can stick "post it notes" on for each area they brain storm in e.g. "write down one thing you learnt about consent last time on a post it note and stick it on this poster" etc
6 3 minutes	[read slide]	
7 2 minutes	[read slide]	If students are having difficulty understanding these laws, please direct them to YLA for more specific advice on different scenarios
8 2 minutes	[read slide]	For deeper discussion, consider engaging learners in a brainstorming session on why these are important things to consider, or if there is anything missing from this slide
9 30 minutes	To finish today's lesson, we are going to break into small groups and create our own presentation on age of consent laws. You can choose the format you wish to complete it in.	Please go through the hand out with students so that they understand the requirements of the task. We also recommend students be provided with a copy of the slides as a reference point.
10 1.5 minutes	To conclude please go back to the survey you minimised at the start of class and complete page 2 before hitting submit. Please then turn to the person next to you and share one thing you have learnt from today's lesson.	
11 0.5 minutes		This slide can be left on the screen whilst students complete their survey and discuss one thing they have learnt.
12		Please leave this slide on the screen during question and answer time.

Part 3 – Student activities

This task is designed to engage students in analytical and critical thinking and to conceptualise their understanding, and ability to communicate with others. Students should work in small groups to complete the task and should be encouraged to use a medium that they are familiar with – suggestions include creating a flier on Microsoft Word or Canva, creating a simple website using Google Sites, or creating a Presentation using PowerPoint or Prezi. If students are particularly digitally literate, they may consider other ways of communicating the information e.g. in a series of social media posts (including hashtags and images), infographics or in a video/stop motion animation (if time permits). You may wish to encourage students to complete their research and planning in class and put the media together outside of class, or you may wish to encourage them to complete the whole activity within class.

Students should have the opportunity to provide feedback to one another on their presentations.