

Sex and consent

Year 9-10

NSW

Module [1/1]

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What is consent to sex?

- Consenting to sex means freely and voluntary **agreeing** to sex
- There are lots of factors that might stop someone from being able to give consent.

NO MATTER YOUR AGE, IT IS ALWAYS ILLEGAL FOR SOMEONE TO TRY AND FORCE YOU TO ENGAGE IN ANY KIND OF SEXUAL ACTIVITY WITHOUT YOUR FULL CONSENT (FREE AND VOLUNTARY AGREEMENT).

Source: section s 61HD, s 61HE Crimes, s 61I Act 1900 (NSW)

Scenarios

Phillip and Alicia have always been very flirty with each other. It is clear to everyone that they have a crush on each other. One night at a party Phillip decides he wants to take things to the next level with Alicia but he knows that she gets very anxious. He tells her that he has poured her a lemonade but Phillip has secretly snuck 4 shots of vodka into the lemonade to loosen Alicia up. Alicia is known for being a lightweight. When Phillip gets Alicia alone they start kissing, and Alicia pushes Phillip away several times. Phillip knows Alicia is drunk and doesn't want to keep going, but he "can't help himself" and keeps pushing Alicia until she gives in and has sex with him. Was consent given? Why/why not?

What is sex?

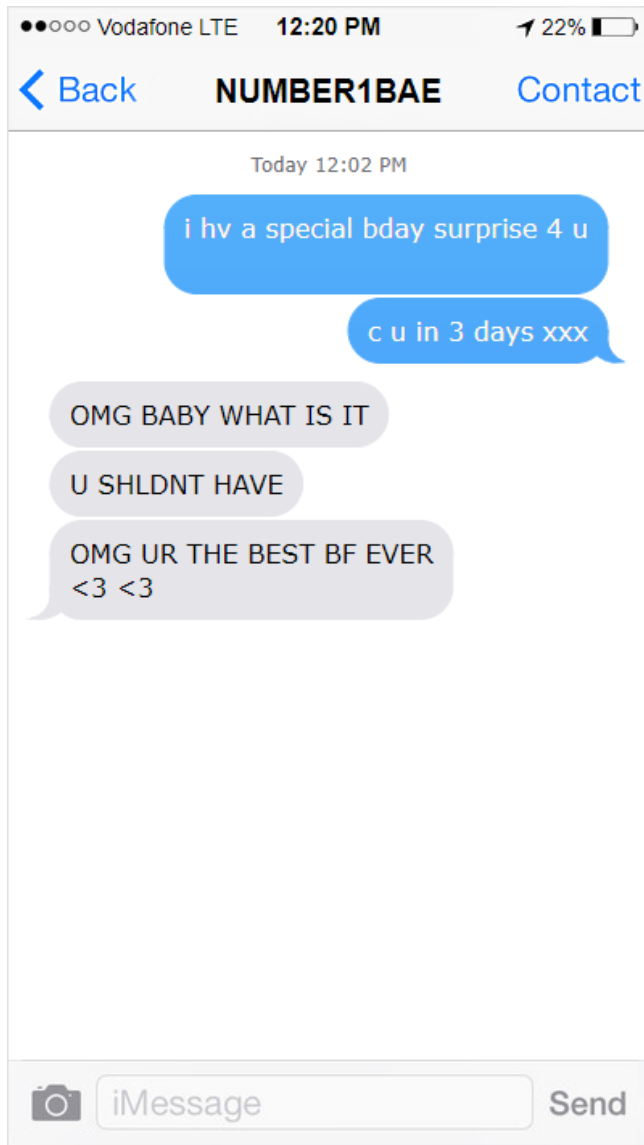
Sex means:

- When a penis, finger, object or any part of a person is partially or fully inside another person's vagina or anus (“penetrative sex” or “sexual intercourse”); or
- Any kind of oral sex.

REMEMBER, NO MATTER YOUR AGE, IT IS ALWAYS ILLEGAL FOR SOMEONE TO TRY AND FORCE YOU TO ENGAGE IN ANY KIND OF SEXUAL ACTIVITY WITHOUT YOUR FULL CONSENT (FREE AND VOLUNTARY AGREEMENT).

Source: section s 61HA Crimes Act 1900 (NSW)

Scenarios



Jaime is 12 years old. Her birthday is the 5th of July. She has just started seeing Mitchell who is 13 years old. Mitchell will turn 14 on the 3rd of August. Mitchell and Jaime have the following conversation via text. When Jaime and Mitchell meet up on Jaime's birthday, they both share their first kiss. Would age of consent laws apply to this? why/why not?

Age of consent

The age of consent (which is different to consent generally) is the legal age a person must be before the law says they can consent to have sex with another person. In NSW, the age of consent is **16 years old**.

Source: section s 66A, s 66C Crimes Act 1900 (NSW)

There are some situations when an older teenager having sex with someone over 14 cannot be successfully prosecuted for breaking the age of consent laws. If a person is older than 14, they can legally consent to have sex with another person who is *less than two years older than them (in other words, the person is not more than 729 days older)*.

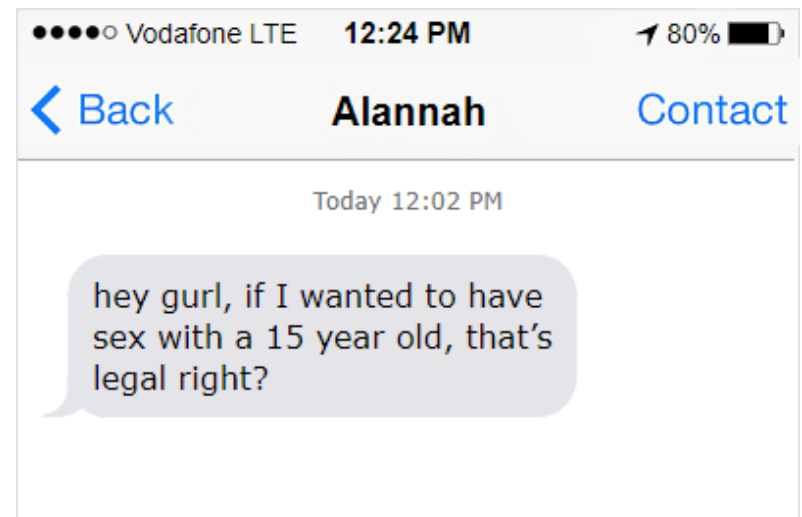
BUT since the law in this area can be complicated to apply, it is always risky to have sex with another person who is under the age of consent.

See the [Youth Law Australia page on sex](#) for more information.

Source: section s 80AG Crimes Act 1900 (NSW)

Scenarios

Katie is 15 years old, and Alannah is 17 years old. They have both agreed that they are ready to take their relationship to the next level, but before going any further, Alannah decides to send her cousin who is studying law a quick text to find out if it is legal to have sex. Alannah's cousin doesn't know Katie, or anything about the relationship, including how they know each other. Pretend you are Alannah's cousin and write what might you say. Is there any extra information you might need to answer this question?



Position of care or authority

There are special laws that apply to relationships where one person is in a position of care or authority over another person. These laws are designed to protect a young person by being taken advantage of by someone who is in a position of power over them.

In NSW, the age of consent for relationships of care or authority is **18 years old**.

There are some situations when an older teenager having sex with someone over 14 cannot be successfully prosecuted for breaking the age of consent laws. If a person is older than 14, they can legally consent to have sex with another person who is *less than two years older than them (in other words, the person is not more than 729 days older)*.

BUT since the law in this area can be complicated to apply, it is always risky to have sex with another person who is under the age of consent.

See the [Youth Law Australia page on sex](#) for more information.

Source: section s 80AG Crimes Act 1900 (NSW)

Scenarios

Alex and Phillip work together. Alex is 22 years old and is Phillip's manager. Phillip is 17 years old. They have been sending flirty texts and hanging out for ages. They've never done more than hold hands or kiss, but they have recently started talking about doing "it". They decide to post on online asking other people what they think about hooking up with your boss. You've seen the post on online. How do you respond?

Other things to think about

- Having an open discussion about what you both want (consent)
- Understanding the risks of unwanted pregnancy or having unsafe sex
- Talking to a counselling/support service e.g. 1800MYLINE or Family Planning NSW
- Checking what the law says if you are ever unsure about something by visiting yla.org.au

Scenarios

Jeremy is 15 years old, and his girlfriend Kaitlyn is also 15 years old. After meeting a roaming sexual health counsellor at the beach one day who explained safe sex and the new laws on age of consent, Jeremy and Kaitlyn decide they are ready to have sex. However, Jeremy thinks that wearing a condom might make him “less sexy” to Kaitlyn and is worried that she won’t want to have sex. You are Jeremy’s best friend and he has come to you for advice on what to do. What would you say to him?



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Summary

- Consent means free and voluntary agreement. There are some scenarios when consent cannot be given.
- The age of consent is the legal age you can agree to have sex.
- In NSW, the age of consent is unless one person is in a position of care or authority over the other person. In this case the age of consent becomes 18.
- There are legal exceptions to the age of consent if *long as you are above 14, and they are less than two years older than you.*
- It is important to consider the risks involved in having sex and to discuss these with your partner before agreeing to do anything.

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