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## Legal age for sexually active in australia

This source letter is designed to inform doctors and researchers about the age of consent legislation in Australia. If you're a young person seeking advice on sexual relationships, check out some of the following websites: LawStuff provides Australian state- and territory-specific legal information on a range of topics, including sex, love and health. ReachOut has information on sex and relationships for young people. Sex, Love and Other Things is an online brochure for young men, developed with the help of young men who talk about sex, relationships, power and respect. What do you expect? is an online campaign against sexual violence that provides young people with practical information on consent, sexual dealings, sexting and safety strategies. Laws on the age of consent attempt to strike a balance between protecting children and young people from exploitation and other harm and preserving their right to privacy and healthy sexual development. Young people of the age of consent are perceived by law to have a general sexual capacity to enforce personal boundaries and to discuss the risks associated with sexual activities. If an adult engages in sexual behaviour with someone below the age of consent, he or she commits a crime (child sexual abuse). Laws on the age of consent cannot be considered in isolation from other legislation on issues such as sexual assault and child sexual abuse. For more information on the legislation on these issues, see the Brief Review of Current Sexual Offences and Child Sexual Abuse legislation in Australia (Boxall, 2014). For more information on preventing child sexual abuse, see the Conceptualising the Prevention of Child Sexual Abuse report (Quadara, Nagy, Higgins, & Siegel, 2015). Why are there laws of consent? Laws on the age of consent are designed to protect children and young people from sexual exploitation and abuse. Such legislation effectively stigmatizes that children and young people who have not reached the age of consent have not yet reached a level of general maturity that will allow their safe participation in sexual activities. With regard to allegations of sexual abuse in each state and territory, the key difference between sexual assault against children and sexual assault of adults is that sexual assault of adults is based on the absence of sexual consent, whereas in child sexual assaults the issue of consent is at the origin of the consent laws (Eade, 2003). A distinction should be made between willingness and consent. The child may be willing to engage in sexual behavior; however, since they do not have the decision-making capacity to give consent under the law, all sexual interactions between an adult and a person under the age of consent are considered abusive (Barbaree & Marshall, 2006). What is the legal age of consent in Australian state and territory jurisdictions? Legal age of consensual in each individual jurisdictions of the State and territory (see Table 1). The age of consent is 16 at the age of 16 in the Australian capital territory, New South Wales, the Northern Territory, Queensland, Victoria and Western Australia. In Tasmania and South Australia, the consent age is 17. Sexual interactions with 16 and 17-year-olds in special care Although the legal age of consent across Australia is either 16 or 17 years old, legislation in New South Wales, Victoria, Western Australia, South Australia and the Northern Territory makes it an offence for a person in a supervisory role to engage sexually with a person aged 16 or 17. A person in a supervisory role providing special care may include: a teacher, foster parent, religious official or spiritual leader, doctor, employer of the child or prison official. For more information about sexual interaction with 16 and 17 year olds under special care, please refer to the relevant national or territory legislation. What if both parties are younger than the age of consent? Developmentally Appropriate Sexual Survey It is a common and common part of sexual development for young people to explore and experiment in sexual interactions with their peers (Araji, 2004; Barbaree & Marshall, 2006; Eade, 2003). A developmentally appropriate sexual survey is when there is mutual agreement between peers of the same or a similar age, not coercive and all participants have control to participate in, continue or stop the behavior (Barbaree & Marshall, 2006). State jurisdictions that provide legal defence when sexual interaction between two young people close to age (Western Australia, Tasmania, Victoria and the Australian Capital Territory) are trying to strike a balance that protects children and young people from adult sexual exploitation in a way that does not criminalise them for having sexual relations with their peers. Problem or harmful sexual behavior Sexual interaction, which is harmful and abusive between two young people under the legal age, can be difficult to identify and identify. In situations where there is a clear age difference - for example, a teenager and a young child - any sexual interaction is sexual abuse, because there is a clear imbalance of strength. However, when both sides are close to age, identifying whether sexual activity is abusive is more difficult. Ryan (1997) suggested three factors to consider in order to evaluate sexual interactions between two or more children: consent, equality and coercion. Reflections on these three factors can help clarify when behaviour is abusive. Consent Four areas of knowledge are needed to give consent: understanding what physical acts involve, their meaning, society's laws and cultural norms, and possible consequences (McCarthy & Thompson, 2004). According to a theoretical and practical understanding of consent, these key elements include: transparency of what is proposed (not deceived or deceived); that all parties have similar cultural knowledge of standards of conduct; that all parties are similarly aware of possible consequences, such as pregnancy or illness; respect for the agreement or disagreement without consequences; and this consent is freely given and that all parties have the legal power to give their consent freely (they have decision-making power and are not affected by intoxication) Equality and coercion equality refers to the balance of power and control between those involved in sexual activities. There must be an appropriate degree of equality between the parties involved in sexual activities, be they relationships (authority and dependence), physical and/or intellectual capacity or age (Conroy, Krishnakumar, & Leone, 2015; Craig, 2014; 6. McCarthy & Thompson, 2004; Ryan, 1997). Gender and gender inequality also play a role in sexual consent. Templeton, Lohan, Kelly, & Lundy (2017, p. 1294) read that adolescents' sexual values, personal beliefs and expectations regarding sex are deeply shaped by gender-based behavior regulated by their partner and social environment. Coercion can be described as peer pressure exerted on one child by another to achieve compliance (Ryan, 1997). Such pressure can be placed on the continuum. The lower part may include implicit authority, manipulation, fraud or bribery. The upper end of the continuum may include physical strength, threats of harm and overt violence. If the relationship between two children or young people under the legal age of consent is unequal, non-consensual or coercive, it is abusive and may require child protection or a judicial response. Age of consent and digital technologies Recent sex education programmes for children and young people aged up to or in the age of consent have shifted from a dominant risk-based paradigm to building knowledge and resilience, in particular on current issues such as digital technologies. Public concerns about the healthy sexual development of young people now include discussions about their use of information and communication technologies, most of which are allowed on the Internet. Widespread use of mobile phones has led to a number of legal interventions seeking to protect children from sexual exploitation in the online environment. Sexting laws provide a good example of how digital sexual activity doesn't necessarily align with the broader age of consent laws in Australia. McLelland (2016, p. 4) points out that in many jurisdictions provisions aimed at protecting young people from sexual predation and exploitation can also be used to criminalise and prosecute sexual self-expression of persons under the age of 18 - even if young people is at the age of consent. A survey of Australian teenagers and their sexting behaviour found that 16-17-year-olds must navigate sexual practices that may be both consensual and legal, but illegal to visually record (Albury, Crawford, & Byron, 2013, p. 4). This can pose challenges for young people and those who work with them. For more information on young people and sexting, see Lawstuff and the Office of the Commissioner for Children's E-Safety. Provisions on legal defence in cases relating to sexual activities with a person up to legal age If a person is accused of engaging in sexual conduct with a person who is not of legal age, various legal defences are available, which are provided for in the legislation. While legislation varies from state to territory, there are generally two types of defence available (Cameron, 2007). The first type concerns whether the accused, for justified reasons, considered that the person they had behaved with was above the legal age of consent. All jurisdictions (except New South Wales) have provisions for this defence in the legislation; however, there are a number of differences as regards the limitations on the use of the defence according to the age of the alleged victim. The defence cannot be used if the age of the victim at the time of the alleged offence was: 10 years or younger in the Australian capital territory; 12 years of age or younger in Queensland, Tasmania and Victoria; 13 years of age or younger in Western Australia; 14 years of age or younger in the Northern Territory; 16 or younger in South Australia. The second legal defence concerns situations in which these two people are close to age. In Tasmania, for example, this is a defence if the child is 15 years old and the accused person was not over 5 years of age as a child, or if the child was over 12 years of age and the accused person was not older than three years as a child. In Victoria and the Australian Capital Territory, sexual behaviour at legal age can be defended if the defendant was no more than two years older and in Western Australia no more than three years older than the person against whom the offence was allegedly committed. There is also legal provision for defence in Victoria and Western Australia if the accused can prove that he is legally married to a child. For details on other countries, see Table 2. Table 2: Legal Defence of the Age of Consent Laws State Legislation Legal Defence ACT Crimes Act 1900 (Section 55) If a person is accused of engaging in sexual activities with a person up to the legal age, the legal defence is set out in Section 55(1) of the Act. It states that: This is the defence of a criminal offence against subsection 2 if the defendant finds that - a) he considered, for reasonable reasons, that the person to whom the offence was allegedly committed was 16 years of age or older; or (b) at the time of the alleged offence, (i) the person to whom the offence was allegedly committed was aged 10 years or above; and (ii) the defendant is not more than 2 years of age; and that that person consented to sexual intercourse. NSW Crimes Act 1900 (Section 66C) There is no legal defence in legislation when charges are made against a person accused of engaging in sexual activities with a person up to the legal age. NT Criminal Code Act 1983 (Section 127) If a person is accused of engaging in sexual activities with a person who is not of legal age, the legal defence is outlined in Section 127(1) of the Act. It states that: It defends the charge of committing a criminal offence as defined in this section in order to demonstrate: (a) the child was or was aged 14; And (b) the accused person believed for reasonable reasons that the child was aged 16 or over. QLD Criminal Code Act 1899 (Section 215) Draft Health And Other Legislation Act 2016 If a person is accused of engaging in sexual activities with a person of legal age, the legal defence is outlined in Section 215(1) of the Act. It states that: If the offence was committed in relation to a child aged 12 or over, the defence shall prove that the accused person believed, for justified reasons, that the child was aged 16 or over. The Criminal Law Consolidation Act 1935 (Section 49) If a person is accused of engaging in sexual activities with a person who is not of legal age, the legal defence is outlined in Section 49(1) of the Criminal Law Consolidation Act. It states that: It is defending the allegations under subsection 3 in order to prove that - a) the person with whom the accused allegedly had sexual intercourse was, on the day the offence was allegedly committed, aged sixteen or over; and (b) the accused -(i) was under the age of 17 on the day on which the offence was allegedly committed; or (ii) reasonably considered that the person with whom he allegedly had sexual intercourse was or was over 17 years of age. Criminal Law Act TAS of 1924 (Article 124) If a person is accused of engaging in sexual activities with a person who is not of legal age, legal defence is outlined in Section 124(1) of the Criminal Act 1924. It states: It is the defence of the charge under this section to show that the accused person believed, for justified reasons, that the other person was aged 17 or over. Subsection (3) describes the defence against this charge: Consent of a person against whom a criminal offence has allegedly been committed under this Section is the defence of such an accusation only if, at the time the offence was committed (a), that person was aged 15 or above and the accused person was no more than 5 years older than that person; (b) that person was 12 years of age or older and the accused person was not more than 3 years older than that person. VIC Offences Act 1958 (Section 45) If a person is accused of engaging in sexual activities with a person under the legal age, the legal defence is outlined in Section 45(1) of the Criminal Code. It states that: Consent is not a defence of an accusation unless, at the time of the alleged offence, the child was 12 years of age or older and - a) the accused complies with the court on that the he or she is likely to believe that the child was aged 16 or older; or (b) the accused is not more than 2 years old as a child; or (c) the accused satisfies the conditions of the court on account of the likelihood that he or she considered for reasonable reasons that he was married with a child. WA Criminal Code Compilation Act 1913 (Section 321) If a person is accused of engaging in sexual activities with a person up to the legal age, the legal defence is set out in Section 321 (9-10). It states that: It is defending an accusation under this section in order to demonstrate that the accused person (a) considered, for reasonable reasons, that the child was aged 16 or over; and (b) was not more than 3 years older than the child. Note: According to subsection 9(a) of the Annex to Regulation (EC) No 1782/2003, the According to Subsection 10, the defense is accused of moving that the accused was legally married to a child. National Child Protection Framework Australia 2009-2020 One of the key supporting outcomes of Australia's National Child Protection Framework 2009-2020 is: sexual abuse and exploitation of children are prevented and survivors receive appropriate support (Department of Social Services, 2013, paragraph 6). The framework addresses the importance of raising awareness and broader knowledge in the community about the importance of healthy relationships. Conclusion The Age of Consent Laws are important measures to protect children and young people from sexual predation and exploitation. Whether sexual interaction between an adult and a person under the age of consent appeared consensual is irrelevant because children and young people are legally determined to lack the decision-making capacity to consent to sexual activity with an adult. Adolescence is an important phase of growth in which young people develop autonomy, learn to form intimate relationships outside the family and negotiate desire. The challenge to the legislation is to strike a balance that ensures that consent age laws protect young people from sexual exploitation of adults in a way that does not make sexual exploration impossible or radicalised with peers, which is normal for their age and stage of life. 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