

# AFFIRMATIVE CONSENT

*DISCLAIMER: This fact sheet is intended to be used as a general guide only. You should not act on the basis of this fact sheet alone without first getting legal advice about your own particular situation.*

*This was updated in March 2024.*

## INCLUDED IN THIS FACT SHEET ARE:

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Age of consent laws

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Meaning of consent

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## Why is it important to understand consent?

Consent is important to ensure you are able to:

- Maintain healthy relationships
- Make sure everyone feels safe, comfortable and respected

It is also important to understand consent because if there is no consent, then there is sexual assault and other criminal offences.

## Age of consent laws

The new affirmative consent laws will not affect the age of consent laws.

For information on age of consent, please refer to Victoria Legal Aid's website: [Age of consent](#)

## What are the new affirmative consent laws?

From **30 July 2023**, consent laws in Victoria changed.

The changes include:

- An updated meaning of consent
- An introduction of the affirmative sexual consent model
- Changes to circumstances where there is no consent
- Changes to image-based sexual abuse offences involving non-consensual making, sharing or threatening to share intimate images
- Improvements to the justice system to protect victim-survivors, including better education for people on the jury to understand sexual violence.

The changes to the law came into effect from 30 July 2023. This means that unfortunately, the new laws will **not** apply to any cases that happened before 30 July 2023.

## Meaning of consent

Consent now means 'free and voluntary agreement'. The word 'voluntary' makes it clear that an agreement can't be obtained through pressure, threats or other inappropriate ways and reinforces that involuntary bodily reactions are not an indication of consent.

It is also clear under the law that:

- A person does not consent just because they do not resist the act verbally or physically
- A person does not consent just because they consented to:
  - a different act with the same person; or
  - the same act with the same person at a different time or place; or
  - the same act with a different person; or
  - the different act with a different person
- Consent involves ongoing and mutual communication and decision-making between each person involved at every stage
- Consent can be withdrawn at anytime

## Affirmative consent

The new law will require all people involved in the act/acts to take 'reasonable steps' to find out if there is consent.

Steps must involve saying or doing something to find out if the other person or people are consenting.

The steps must be made within a reasonable time before or at the time the act takes place and for **each and every** specific sexual act (e.g. just because someone consented to kissing, it does not mean they consent to touching).

Under the new law, there is a **narrow** exception to the requirement of actively taking steps to obtain consent if the person who failed to take these steps was **substantially** impacted by a cognitive impairment or mental illness. The exception does not apply if the cognitive impairment or mental illness was caused by self-induced (voluntary) intoxication.

## Circumstances where there is NO consent

Consent is not given if a person:

- Does not say or do anything as a sign of consent (e.g. freezing)
- Uses force or fear of force or harm (including physical, psychological, financial)
- Is held against their will
- Is asleep, unconscious or affected by alcohol/drugs
- Does not understand the sexual act
- Has been tricked about the act or identity of the person
- Withdraws consent
- Is under coercion or intimidation
  - This circumstance has been included to better reflect the complexity of consent in the context of family violence and the inability to give free and voluntary agreement in these situations.
  - Coercive control is a pattern of controlling and manipulative behaviours within a relationship with the aim of taking away the victim-survivors' freedom and independence and to be dependent on the perpetrator.

Consent is also not given if:

- There is an abuse of a relationship of authority or trust (when a person takes advantage of their relationship or misuses their position of power to cause the other person to submit to the sexual act or to feel they have no choice but to submit)
- There is false or misleading representation about payment of commercial sexual services (there is no consent if a person lies about making payment or gives fake bank details to sex workers)
- There is an agreement made that a condom will be used and the person removes or tampers with the condom, also known as "stealthling".

## Getting Legal Help

### Youthlaw

If you are under 25, you can get free and confidential legal advice.

Daily helpline: Mon – Fri, 9am- 5pm: 03 9113 9500

Email: [legal@youthlaw.asn.au](mailto:legal@youthlaw.asn.au)

### Victoria Legal Aid – Legal Help

For legal information, referrals or appointments.

1300 792 387

[www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

### Youth Law Australia

Free information and legal advice for young people under 18.

(02) 9385 9588

[www.yla.org.au](http://www.yla.org.au)

## Where to get help and support



# WHERE TO GET HELP AND SUPPORT

Name of service	What do they do	How to contact them
1800RESPECT	24-hour national sexual assault, family and domestic violence counselling line for any Australian who has experienced, or is at risk of, family and domestic violence and/or sexual assault.	1800 737 732 Webchat: <a href="https://1800respect.org.au/">https://1800respect.org.au/</a>
Safe Steps	24/7 Victoria's state wide family violence crisis service for anyone experiencing family violence	1800 015 188 Webchat (Mon-Friday, 9am-midnight): <a href="https://www.safesteps.org.au/">https://www.safesteps.org.au/</a>
Lifeline	National charity providing all Australians experiencing emotional distress with access to 24 hour crisis support and suicide prevention services.	13 11 14 Webchat: <a href="https://www.lifeline.org.au/">https://www.lifeline.org.au/</a>
Kids Helpline	Free (even from a mobile), confidential 24/7 online and phone counselling service for young people aged 5 to 25.	1800 55 1800 Webchat: <a href="https://kidshelpline.com.au/">https://kidshelpline.com.au/</a>
Emergency	24-hours Immediate support from Victoria Police and Ambulance	000
Centre Against Sexual Assault	There are specialist sexual assault services across Victoria that provide free and confidential counselling and advocacy support for people of all ages, as well as their family, friends and community members who have also felt impacted. You can access a sexual assault service no matter how long ago the sexual assault happened.	You can find the closest sexual assault services via: <a href="https://peak.sasvic.org.au/service-map#gsc.tab=0">https://peak.sasvic.org.au/service-map#gsc.tab=0</a>
Sexual Assault Crisis Line	State-wide, after-hours, confidential, telephone crisis counselling service for people who have experienced both past and recent sexual assault.	1800 806 292 (5pm weeknights through to 9am the next day and throughout weekends and public holidays)
Q Life	QLife provides anonymous and free LGBTIQ+ peer support and referral for people in Australia wanting to talk about sexuality, identity, gender, bodies, feelings or relationships.	1800 184 527 (3pm to midnight, everyday) Webchat: <a href="https://qlife.org.au/">https://qlife.org.au/</a>

Name of service	What do they do	How to contact them
Rainbow Door	Rainbow Door is a free specialist LGBTIQ+ (Lesbian, Gay, Bisexual, Transgender and Gender Diverse, Intersex, Queer, Asexual, BrotherBoys, SisterGirls) helpline providing information, support, and referral to all LGBTIQ+ Victorians, their friends and family.	1800 729 367 (10am–5pm, everyday) Text: 0480 017 246 Email: support@rainbowdoor.org.au
Yarning Safe'N'Strong	24/7 free and confidential counselling service for Aboriginal and Torres Strait Islander Peoples	1800 959 563
1800 My Options	For information about contraception, pregnancy options and sexual health in Victoria	1800 696 784 (9am–5pm, Monday to Friday, closed public holidays) Email: info@1800myoptions.org.au
Victim Support Agency	Official Victorian Government service offering free information and support for people affected by crime.	1800 819 817 (Victims of Crime Helpline) (8am–11pm, everyday) Text: 0427 767 891 Email: vsa@justice.vic.gov.au
eSafety Commissioner	Australia's independent regulator for online safety. eSafety can help investigate online abuse complaints and/or support for people experiencing cyberbullying, image-based abuse, illegal and harmful online content including child sexual abuse material, pro-terrorist content and content that promotes, incites or instructs in crime or violence.	Online forms General enquiries: <a href="https://www.esafety.gov.au/about-us/contact-us">https://www.esafety.gov.au/about-us/contact-us</a>  Report: <a href="https://www.esafety.gov.au/report/forms">https://www.esafety.gov.au/report/forms</a>
Victoria Legal Aid	Free legal information and advice to Victorians.	1300 792 387 (8am–6pm, Monday to Friday) Webchat: <a href="https://www.legalaid.vic.gov.au/">https://www.legalaid.vic.gov.au/</a>
Youthlaw	Free legal advice for young people in Victoria, under 25 years old.	(03) 9113 9500 (9am–5pm, Monday to Friday) Email: legal@youthlaw.asn.au

*Youthlaw acknowledges the support of the Victorian Government.*