

Key Messages Guidance – Supporting Young People to Understand Affirmative Consent Program

This information sheet has been prepared by the Affirmative Consent Leadership Consortium (the ACLC), a partnership between:

- Sexual Assault Services Victoria
- Youth Affairs Council Victoria
- Safe & Equal
- Victoria Legal Aid

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Audience & Purpose statement

This information sheet has been prepared by the ACLC to support and guide project partners of the *Supporting Young People to Understand Affirmative Consent Program*, funded by the Department of Families, Fairness and Housing (DFFH).

The information contained in this resource is intended to be used by organisations educating and supporting young people to understand affirmative consent in the Victorian legal context. The information below has been informed by the [Justice Legislation Amendment \(Sexual Offences and Other Matters\) Act 2022](#) that came into effect in Victoria on 30 July 2023.

Disclaimer: This document is intended as general overview only. The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such.

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If you have experienced a recent sexual assault or need-after hours help, please call the Sexual Assault Crisis Line on 1800 806 292.



How to use this document to develop key messages

The 'Legal Principles' in the left column have been directly lifted from the [Victorian Crimes Act \(1958\)](#) to provide the legal context. For further detail please refer to the relevant section of the Act as indicated.

The right column provides guidance on how to communicate key elements of the legislation, either through further translation into targeted communications or used directly within projects. While the messages should be relevant and accessible for the target audience, it is important that the messages shared with young people accurately reflect the legislation.

This is a live document and will be reviewed and built upon based on the feedback of the funded projects throughout the *Supporting Young People to Understand Affirmative Consent Program (2022 - 2024)*.

What are the new affirmative consent laws?

The Victorian government has introduced new reforms that provide key changes to consent laws under the [Justice Legislation Amendment \(Sexual Offences and Other Matters\) Act 2022](#).

These reforms aim to place a greater focus on the actions of the person using sexual violence, rather than on victim survivors. The changes include:

- Updated definition of consent.
- Introduction of affirmative sexual consent model.
- Changes to circumstances where there is no consent.
- Clarifying that 'stealthing' (non-consensual condom removal, tampering or non-use) is a crime
- Changes to image-based abuse
- Improvements to the justice system to protect victim survivors, including better education and direction for members of a jury to understand sexual violence.

For more information on the new reforms:

[Sexual Assault Services Victoria - Victorian Affirmative Consent Laws](#)

Definitions

Sexual consent means that a person is agreeing to take part in a sexual activity. It must be a free and voluntary agreement, and no one should feel forced, coerced or threatened. Consent is required for any type of sexual activity. This is not limited to sexual penetration but also includes oral sex, sexual touching and any other behaviour of a sexual nature.

Affirmative model of consent

The new laws in Victoria emphasise an affirmative approach to consent.

Affirmative consent means a person must take steps to say or do something to check that the other person(s) involved are consenting to a sexual activity freely and voluntarily.

This means that sexual consent can never be assumed. It involves ongoing and mutual communication and decision making between all people involved.

Definitions (continued)

Why is consent referred to as 'enthusiastic consent'?

Sometimes consent is framed as 'enthusiastic consent' as it encourages people to think of consent beyond obtaining a 'yes' or 'no'.

When a person says or does something to ask for another person's consent, ideally, that person will respond in an enthusiastic and positive way to show that they freely and voluntarily agree to a particular sexual activity.

While gaining a 'yes' or indication of consent is an important first step, 'enthusiastic consent' can encourage young people to focus on the other person's tone, body language and facial expressions, for example smiling, positive tone of voice, eye contact.

If someone is communicating that they give consent but appear unsure or hesitant, rather than enthusiastic, this can signal an opportunity to stop and check in with the person again.

It is important to note that gaining 'enthusiastic consent' is not a definition used in the current Victorian legislation and can be difficult to define in a legal context. However, it can be used as a helpful approach when talking to young people about sexual consent to think about other factors beyond obtaining a 'yes'.

'Stealthing' is the intentional non-use, tampering or removal of a condom without the permission or knowledge of the other person or people involved.

Tampering can include intentionally poking holes in the condom or damaging it.

Age of Consent

In Victoria, the age of consent is 16. If a person is 16 years and above, they can legally have sex (or engage in another sexual activity) with another person who is 16 years and above as long as all parties have agreed.

Under 12 years: A person aged 12 years of age or under, even if they agree, cannot consent to any kind of sexual activity. This includes being touched sexually, being asked to touch someone sexually or performing a sexual act in front of someone.

12-15 years: A person aged 12 to 15 years can engage in a sexual activity with someone who is within two calendar years of their age.

16 - 17 years: A person between 16 and 17 years of age cannot consent to sexual activity with anyone who is in a role of care, supervision or authority, for example a youth worker, teacher or foster carer.



Affirmative consent

Legal Principle 1.

Sexual consent is a free and voluntary agreement to engage in any type of sexual activity.

Under the new affirmative consent model, a person must say or do something to find out if there is consent before any kind of sexual activity within a reasonable time before or at the time of the sexual act takes place for their belief in consent to be reasonable.

For more information please refer to s36A of the [Crimes Act \(1958\)](#).

Guidance for key message and resource development

Consent is about making sure that every person is comfortable about what is happening and is freely and voluntarily choosing to take part in a sexual activity.

Everyone involved must clearly agree to a specific sexual activity, in a specific context.

You must seek consent from every person involved before engaging in any type of sexual activity. This could be done by saying or doing something, such as asking a question or using touch or gestures.

Consent must be sought at the time or just before the sexual act. Just because the person said they consented a few hours ago, does not mean they still consent.

Consent might be communicated verbally, but can also be communicated through other ways, such as body language or facial expressions.

Nobody can engage in any type of sexual activity with you unless you have given your consent. You have not given consent unless it was given freely and voluntarily.

Everyone has the right to safe, pleasurable and consensual sex.

Legal Principle 2.

Consent must not be assumed. It requires ongoing communication and decision making involved.

A person does not consent to an act just because they do not resist verbally and physically.

Consent must not be assumed based on past sexual behaviour, including past consent to a sexual act with the same or different person.

For more information please refer to s36(2) and new reforms s36(3) and 37A(ab) of the [Crimes Act \(1958\)](#).

Guidance for key message and resource development

A person does not consent to sexual activity just because they do not resist verbally or physically, for example saying 'no' or fighting back. Consent needs to be communicated using words or actions throughout the sexual act.

You can never assume that someone has given their consent, without checking with them. If the other person(s) have not communicated that they are giving consent, or their communication has changed, it is your responsibility to do or say something to check for their consent.

It can be easy to misunderstand someone's body language and facial expressions. If you are not sure how the other person is feeling, then you should stop and ask them about what they are comfortable with.

You always need to check for consent, whether it's the first time that you have engaged in sexual activity with someone, or if you have an ongoing sexual relationship.

Legal Principle 3.

If someone consents to one type of sexual activity, it doesn't mean they have consented to other types of sexual activity.

For more information please refer to s36(3) of the Crimes Act (1958).

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Consent is ongoing and involves continuous communication between everyone involved.

If someone consents to one thing, for example kissing, it doesn't mean that they consent to other things, for example touching.

Legal Principle 4.

Consent can be withdrawn at any time. If someone removes their consent, then the sexual activity must stop.

For more information please refer to s36AA(1)(p) of the Crimes Act (1958).

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You have the right to change your mind and withdraw your consent at any time before or during sexual activity.

Every person has the right to choose not to engage in sexual activity.

Even if you gave consent initially, you can change your mind and withdraw consent at any time before or during sexual activity.

If someone removes their consent, all sexual activity must stop.

Circumstances where there is no consent

Legal Principle 5.

There are different circumstances where people are unable to give sexual consent. For further information on these circumstances refer to section 36AA(1) of the Crimes Act (1958).

Guidance for key message and resource development

There are different circumstances where, by law, people are unable to give consent or taken to have not consented. This helps to recognise the different reasons why someone may not be able to agree to a sexual act freely and voluntarily. Some of these include where a person:

- Has not said or done anything to communicate that they are giving their consent.
- Only consented because of force, fear, harm, threat or coercion of any kind.
- Is asleep, unconscious or so affected by alcohol and/or other drugs.
- Only submitted because of an abuse of a relationship of power or trust.
- Agreed on the basis a condom would be used and the condom is not used, removed or tampered with, without consent.
- Does not understand the act is sexual.

Legal Principle 6.

Consent cannot be given, if a person consents to a sexual act on the basis that a condom is used and either before or during the act, any other person involved intentionally does not use, removes or tampers with the condom.

For more information please refer to section 36AA(1)(o) of the Crimes Act (1958).

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You cannot intentionally remove or tamper with a condom without asking all other people involved for their permission.

If a person has agreed to engage in sexual activity on the basis that a condom will be used, you must get their consent before you do not use or remove it.

If someone intentionally does not use, removes or tampers with a condom, when it was agreed that one would be used, there is no consent.

Reasonable Belief

Legal Principle 7.

A belief is not reasonable if, within a reasonable time before or at the time the act takes place, the person does not say or do anything to find out whether the other person(s) consents to the sexual act.

This places a greater focus on the actions of the accused person to seek consent, rather than just on what the victim-survivor did to show that they didn't consent.

Guidance for key message and resource development

You must say or do something to find out if the other person(s) consents, and that consent is free and voluntary, within a reasonable time prior to and during sexual activity.

If the other person(s) has not given their consent, withdraws consent, or you are not sure if they have given consent then any sexual activity must stop.

Image Based Abuse

Legal Principle 8.

Intimate image means an image that shows:

- a) A person engaged in a sexual activity.
- b) A person in a manner or context that is sexual.
- c) The genital or anal region of a person (whether bare or covered by underwear)
- d) If the person is female, or a transgender or intersex person identifying as female, the breasts of the person.

The intimate image may be a still image, a video, recorded or unrecorded. It does not have to be a real image, it may be digitally generated, manipulated or altered.

Guidance for key message and resource development

Image based abuse involves someone sharing or threatening to share, an intimate photo or video of a person without their consent. This can happen in person or online.

An intimate image can include:

- A person engaged in a sexual activity.
- A person in a sexual context.
- The genital or anal region of a person, both bare and covered by underwear.
- The breasts of the person, if the person is female, or a transgender or intersex person who identifies as female.

This includes images that have been digitally generated, altered or manipulated to look like intimate images of a person. For example, digitally imposing another person's face onto a photograph of a naked person taken from the internet.

If you decide to share an intimate image or video of yourself with one person, it does not mean that you have given permission for them to share it with anyone else or show it to other people.

Legal Principle 9.

A person cannot produce or distribute an intimate image of someone under 18 years of age.

Young people under 18 years cannot consent to sharing and distribution of intimate images.

For more information please refer to S53P(2), S53R(3)(a) and S53S(3)(a) of the Crimes Act (1958).

Guidance for key message and resource development

If you are under 18 years of age, you cannot legally consent to the production or distribution of an intimate image.

It is against the law for people to access, make, share, request, or possess intimate images that show someone who is under 18 in a sexual context.

In Victoria, if you are under 18 years, it is not considered illegal for you to take or keep intimate images of yourself or someone else, if:

- No one in the image is more than 2 years younger than you.
- The image does not show a crime being committed.
- You don't share the image of someone who is under 18 or threaten to do so, even if they gave their consent.

Legal Principle 10.

A person cannot produce or distribute an intimate image, or threaten to do, of someone without their consent.

Guidance for key message and resource development

For people over 18, a person must freely and voluntarily agree to the production or distribution of a particular intimate image, on a particular occasion, in a particular way.

It is never OK to take, send, share or post a nude, sexual or other intimate picture or video of someone without their permission. This applies both in person and online.

A person does not consent to the production or distribution of all types of intimate images just because they consented to the production or distribution of one.

For example:

- Consenting to a photograph being taken but not a video being recorded.
- Consenting to a photograph being emailed to another person but not uploaded to a social media website.

It is against the law to threaten to share an intimate image of a person. If you have shared an intimate image of yourself with someone, and they are threatening to post or share it online, then this is against the law.

How to access support in Victoria



Specialist sexual assault services

There are specialist sexual assault services across Victoria that provide free and confidential counselling and advocacy support to victim survivors of sexual assault. A person can self-refer to a sexual assault service no matter how long ago the sexual violence occurred and without reporting to police.

Visit the [SASVic website](#) to locate your closest sexual assault service.

If you have experienced a recent sexual assault or need after-hours help, please call the Sexual Assault Crisis Line on 1800 806 292.