



Villamanta Disability
Rights Legal Service Inc.

Villamanta Disability Rights Legal Service Inc. Information Sheet

Updated September 2008

Sexual Rights

What is informed consent?

The law says that you have given informed consent when:

- you have had access to information about what is happening, about the risks and benefits of what you are consenting to, as well as the fact that you have a choice; and
- the information you have access to is information specific enough to answer the questions that you think are important; and
- you have the ability to understand all of this information, to weigh it up and to make a decision that's right for you; and
- you are free to make your choice without any threat, duress or biased influence from other parties.

What does the law say about consent and sex?

The law says consent means free agreement. You are *NOT* freely agreeing to sex if you:

- have sex because you are forced to or are frightened you or someone else will be harmed or forced to have sex
- have sex because you are locked up or aren't free to leave
- are asleep, unconscious or intoxicated with alcohol or drugs and can't freely agree
- don't understand what is happening is about sex
- think what is happening is not about sex or think the person you are with is someone else;
- think what is happening is about a medical or hygiene procedure.

What is the age of consent?

The age of legal independence in Victoria is 18 years of age. The age of giving valid consent to sex is 16 years of age unless you are under the care and supervision or authority of the person with whom you wish to have sex. You can have sex when you are less than 16 years of age, but some special rules apply. You can also get married when you are under 18 but only with the permission of your parents or a court. Certainly by the time you are 18 the law says you are an adult and can make your own decisions. This includes decisions about who to have sex with, or whether you want to marry someone. Of course some restrictions still apply to your choice of sexual partner.

Do I have to be married to have sex?

No. Though some people don't want to have sex before they are married for religious, moral or other reasons.

IMPORTANT NOTE!

Remember - this Information Sheet has been produced only for use in Victoria, Australia. Some of the laws mentioned in this Information Sheet will be different in other places.

If I am over 18 years of age, can I have sex with someone who is under 18?

If the other person is 16 or 17 years of age, you can have sex with him or her so long as:

- the other person consents, and
 - is not under your care, supervision or authority and
 - the person is not a close relative.
- If the person is under 16 years of age and you are not married to him or her, it is against the law for you to have sex together even if you both consent.

What if I am 16 or 17 years of age, can I have sex with someone under 16 years of age?

You can have sex, if you want to, so long as the other person:

- consents, and
- is not more than two years younger than you.

If the person is more than two years younger than you and you are not married to him or her, it is probably a crime for you to have sex together even though you both consent.

If I am between 10 and 15 years of age, can I have sex with someone who is much older than me?

It is against the law for an older person to have sex with someone who is between 10 and 15 years of age. If you are between 10 and 15 years of age and you have sex with someone who is more than two years older than you the other person is guilty of a crime and could go to prison. You would not get into trouble with the law but the other person could.

What if I am under ten years of age?

If you are under ten years of age, then anyone who has sex with you will be committing a crime. Even if you agree to have sex with that person, he or she is guilty of a crime and could go to prison. You would not get into trouble with the law but the other person could.

Is there any difference if I have sex with someone of my own sex rather than someone the opposite sex?

No. So long as the other person consents and you are the right age.

Are there people whom I am not allowed to have sex with, regardless of age?

Yes. The law says that it is a crime if you have sex with:

- your sister, half-sister, brother or half-brother
- your mother or father
- your grandfather or grand mother
- your son or daughter
- any other direct relation
- your step-son or step-daughter
- a son or daughter under the age of 18 of your de facto spouse
- any other direct descendant, under the age of 18, of your de facto spouse
- any step-son or step-daughter, under the age of 18, of your de facto spouse

Is the law any different for me if I live in a residential facility?

Yes. As well as the other laws about sexual relations there is a special law that applies to people who live in a residential facility. The law says it is a crime for a worker at the residential facility to have sex with you unless you are married to them, or in a de facto relationship with them.

Is the law any different for me if I have an intellectual disability, mental illness, dementia or brain injury?

Yes. As well as the other laws about sexual relations there is a special law that applies to people who live in a residential facility. The law says it is a crime for a person who is providing you with medical or support services to have sex with you, unless you are married to them or in a de facto relationship with them.

What if I don't want to have sex?

It's OK to say "No" if you don't want to have sex. Remember:

- You are in charge of your body and you have the right to say what happens to it.
- You don't have to have sex with someone if you don't want to, even if you are married to him or her or have had sex with them before.

It is against the law for someone to have sex with you when you don't want to.

What if someone else thinks that I am not able to make my own decisions about who I have sex with?

Unless that person has been appointed as your legal Guardian, and the authority given to them by the [Guardianship List](#) includes decision-making around your sexual relationships, no one has the authority to prevent you from making your own decisions About sexual relationships.

What happens if I think someone has broken the law by having sex with me?

It's important to tell someone, if you think someone has broken the law by having sex with you. It's not your fault if someone else has broken the law. Keeping it secret may make you feel bad. Telling someone about it may stop the person from hurting someone else. You don't have to tell the police if you don't want to. There are trained sexual assault workers who can help you decide what to do and talk about what happened. They will not tell anyone else if you don't want them to.

Where do I go for more information?

If you want to know more about sexual relationships or your sexual rights you can contact:

Family Planning Victoria — Free Call 1800 013 952

Your nearest Centre Against Sexual Assault (CASA) - Free Call 1800 806 292

Women's Legal Service — Free Call 1800 133 302

Your local Community Legal Centre (CLC) — To get contact details of a CLC nearest you, call (03) 96521500

Helpful Hint:

This Information Sheet should be read together with the Vilamanta Disability Rights Legal Service Inc. Information Sheets on Guardianship, Appointing an Enduring Guardian and Capacity and Consent.

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Looking for More Information?

If you want more information about having an administrator, you can phone:
*The Guardianship List of the Victorian
Civil and Administrative
Tribunal.*