Key messages

- In WA, for sexual activity to be consensual, people need to be 16 years of age or older, and freely agreeing. The only time the legal age of consent to sexual activity is different is when one of the people involved is in a position of power (such as a coach or social worker), then everyone involved must be 18 years or older.
- Teachers must follow the procedure for mandatory reporting if you suspect or been disclosed sexual abuse.

The material displayed on this page is intended to help teachers develop a basic understanding of sexually related aspects of the law. If there is a situation that requires legal assistance, expert advice should be sought.

Sexual assault

Under the Criminal Code in Western Australia, there is no offence called 'sexual assault', the law actually specifies sexual-related offences such as 'indecent assault' and 'sexual penetration without consent'. The term 'sexual assault' has been used to generally describe these types of offences:

- Crimes of a sexual nature relating to the lack of consent on the part of the victim. Submission to sexual assault is not the same as giving consent. Consent is the product of a conscious and informed decision-making process and involves willing agreement.
- Broad definitions of sexual assault range from a pinch on the bottom to very violent acts of sexual intercourse.

It is estimated that more than seventy-five percent of women and men do not report being sexually assault to police. Often, the offender is known to the victim, and the most common place of assault is the victim's or assailant's home. There appears to be no agreement on how to fully explain the causes of sexual abuse and assault. However, social and cultural factors are thought to explain the high levels of sexual assault and abuse on women and children.

Immediate procedure following an assault

- Talk to someone trusted about what happened as soon as possible.
- If possible, do not shower, wash genitalia or change appearance in any way until after being examined by a doctor.
- Call the nearest sexual assault service for confidential advice and support or contact the Sexual Assault Resource Centre (SARC) crisis line on 08 9340 1828 or 1800 199 888 from anywhere in Western Australia.

Child sexual abuse

'Sexual abuse' with regard to a child, includes sexual behaviour in circumstances where:

- the child is the subject of bribery, coercion, a threat, exploitation or violence
- the child has less power than another person involved in the behaviour
- there is a significant disparity in the development, function or maturity of the child and another person involved in the behaviour.

Age of consent

The law prohibits sexual relations with and between young people under the age of 16 years.

The fact that a person under 16 years of age gives consent is not a defence to this charge (although it may be if the person is up to 3 years older than the child involved unless the child is under 13 years old). Further information about age of consent laws is available from the Australian Institute of Family Studies website.

Contraception

Decisions related to sexuality, such as taking the contraceptive pill, can be made by people under the age of 18. The decision is made between the person and a medical practitioner. There is no requirement for parents to be informed of any such decision.

Same-sex sexual activity

The Western Australian government passed amendments to the legislation regarding homosexuality and gay and lesbian people in March 2002. This legislation established new laws which:

- allow consensual sexual activity for anybody above the age of 16 regardless of sexual orientation
- recognise the status of homosexual de facto relationships and their families for certain legally binding rights and obligations
- make it unlawful to discriminate against someone because of their sexual orientation.

How should a teacher deal with disclosures

Refer to the Essential tool: Managing disclosures.

What about laws that relate to sexting or sharing of intimate images?

Refer to the Educator note: Sexting.

Relevant resources

Websites

Sexual Assault Resource Centre (SARC)

Child Protection, WA Department of Education

Legal Aid WA InfoLine

Aboriginal Legal Service of WA

Fact sheets/booklets/videos

What the law says about sex, WA Department of Health

Ready, willing and able: A young person's guide to consent to sexual activity, Sexual Assault Resource Centre (SARC)

Tea and consent video, UK Police

Sex and consent, Legal Aid WA

This Background Note relates to the following Learning Activities:

- Sexual consent and the law

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