



Age of consent laws In Australia

Prepared by the Australian Federation of AIDS Organisations

Background

The age of consent for homosexual and heterosexual sex is 16 years of age in the ACT, NSW, NT, Victoria and WA, and 17 years of age in South Australia and Tasmania. Of all the Australian states and territories, only Queensland retains a different age of consent for anal sex versus other sex.

The table below sets out the relevant laws and also defences to the specific criminal charges. Generally, there are two types of defences available. The first relates to the two people concerned being close in age (e.g. a 17 year old and a 15 year old). The second relates to the accused having made a reasonable mistake in believing the person with whom they were having sex was over the age of consent. The defences are applied differently in each state and territory.

Age of consent laws by state/territory

NB: table is correct as of October 2011.

ACT Crimes Act 1900	The age of consent for gay (and straight) sex is 16. (s 55) Legally, it is a defence if: <ul style="list-style-type: none">• you believed on reasonable grounds that your partner was 16 or older, or• your partner was above the age of 10,• and you were not more than 2 years older than them, and your partner consented to the sexual intercourse.
NSW Crimes Act 1900	The age of consent for gay (and straight) sex is 16. (s 66C). There is no statutory defence.
NT Criminal Code Act 1983	The age of consent for gay (and straight) sex is 16. (s 127(1)) Legally, it is a defence if your partner was 14 or older and you believed on reasonable grounds that they were 16 or older. (s 127(4))

<p>Qld</p> <p>Criminal Code Act 1899</p>	<p>The age of consent for anal sex is 18 (s 208(1)) and 16 for any non-anal sex (s 215(1)).</p> <p>Legally, it is a defence if your partner was 12 years or older and you believed on reasonable grounds that they were 18 or older.</p>
<p>SA</p> <p>Criminal Law Consolidation Act 1935</p>	<p>The age of consent for gay (and straight) sex is 17. (s 49)</p> <p>Legally, it is a defence if your partner was 16 or older and</p> <ul style="list-style-type: none"> • you were under 17 or • you believed on reasonable grounds that your partner was 17 or older.
<p>Tas</p> <p>Criminal Code Act 1924</p>	<p>The age of consent for gay (and straight) sex is 17. (s 124)</p> <p>Legally, it is a defence if:</p> <ul style="list-style-type: none"> • you believed on reasonable grounds that your partner was 17 or older.
<p>Vic</p> <p>Crimes Act 1958</p>	<p>The age of consent for gay (and straight) sex is 16. (s 45)</p> <p>Legally, it is a defence if your partner consents and:</p> <ul style="list-style-type: none"> • your partner was 12 or older and you believed on reasonable grounds they were 16 or older or • you were not more than 2 years older than them or • you believed on reasonable grounds that you were married to them. <p>The first two defences will not apply if your partner is under your care, supervision or authority. Section 48 increases the age of consent in these situations to 18 years.</p>
<p>WA</p> <p>Criminal Code Act 1913</p>	<p>The age of consent for gay (and straight) sex is 16. (s 321)</p> <p>Legally, it is a defence if you believed on reasonable grounds that your partner was 16 or older and you were not more than 3 years older than them. These defences will not apply if your partner is under your care, supervision or authority.</p>

Queensland has a general age of consent for sexual intercourse set at 16 years of age for men and women, but a higher age of consent of 18 years of age for anal sex. This restriction applies to any person who sodomises someone under 18 years or permits a male person under 18 years to sodomise him or her (section 208 of the Queensland Criminal Code). The maximum penalty for anal sex with someone under 18 years of age is 14 years imprisonment. Although the anal intercourse law applies to both young men and women, in practice it particularly affects young gay men.

In July 2005, the Qld Anti-discrimination Commissioner, Susan Booth, wrote to the Queensland Government, arguing that the provisions of the Criminal Code are inconsistent with the objects of the Qld *Anti-Discrimination Act 1991*. Ms Booth argued that the real effect of the Code is to treat homosexual men differently to heterosexual men and women. It

therefore discriminates on the basis of sexuality.¹ In subsequent correspondence with AFAO, the Queensland Attorney General, Linda Lavarch, has stated that the government has no plans to change the legislation at present.

As well as being discriminatory, the law is at odds with young people's sexual practices. Research conducted by the Australian Research Centre in Sex, Health and Society (ARCHRS) found that many same-sex attracted young people came to a very early realisation of their sexual difference, with the majority realising their sexual difference at puberty (11 – 13 years). It also showed that same sex attracted young people were likely to be sexually active earlier than their heterosexual peers (although sometimes these early encounters were with people of the opposite sex).²

Of particular relevance to HIV educators is the finding that only 70 % of the 15-18 year olds surveyed used a condom during their last penetrative sex encounter, although boys were more likely to use a condom than girls.³ Rates of diagnosed STIs were five times higher than those for heterosexual young people⁴, with 10% having been diagnosed with an STI⁵. These findings give a clear message that young people require more and better sexual health information and support in having safe and protected sex. Clearly that can't effectively occur if the consensual sexual acts in which they engage are illegal.

Discriminatory age of consent laws undermine efforts to address young gay men's sexual and general health. AFAO and its member organisations have argued that a supportive and non-punitive legal environment is essential for HIV prevention, treatment and care programs to operate effectively. Acknowledgement of the need for an enabling legal and policy environment has been one of the strengths of Australia's National HIV Strategy.

¹ Letter from Susan Booth, Anti-Discrimination Commissioner Queensland to the Qld Attorney-General and Minister for Justice, the Honourable Rod Welford MP, 15 July 2005, quoted at http://www.queerradio.org/AOC150705_ADCQ.htm.

² Hillier L, Turner A, Mitchel A, (2005) *Writing themselves in again: 6 years on - the 2nd national report on the sexuality, health & well-being of same sex attracted young people in Australia*, (Monograph series no. 50), Australian Research Centre in Sex, Health & Society, La Trobe University, Melbourne, p. vii & viii.

³ Ibid., p.33

⁴ from Australian Research Centre in Sex Health & Society (2003), *Secondary Students & Sexual Health 2002: Results of the 3rd National Survey of Australian Secondary Students, HIV/AIDS and Sexual Health*

⁵ Hillier L, Turner A, Mitchel, op. cit., p.viii

Advice

HIV/AIDS Legal Centre (NSW)	www.halc.org.au
HIV/AIDS Legal Centre (VIC)	www.vicaids.asn.au/plc-legal-assistance
AIDS Action Council of the ACT	http://aidsaction.org.au/
ACON (NSW)	www.acon.org.au
AIDS Council of South Australia (ACSA)	www.acsa.org.au
Northern Territory AIDS and Hepatitis Council (NTAHC)	www.ntahc.org.au
Healthy Communities (QAHC)	www.qahc.org.au
Tasmanian Council of AIDS, Hepatitis and Related Diseases (TASCAHRD)	www.tascahrd.org.au
Victorian AIDS Council/Gay Men's Health Centre (VAC/GMHC)	www.vicaids.asn.au
Western Australian AIDS Council (WAAC)	www.waaid.com

Please note: This factsheet contains general information only. It does not constitute legal advice. State and territory laws change from time to time. You should check before you act on this information, and it would be advisable to contact an AIDS Council or legal centre if you need assistance or legal advice regarding your own or another person's situation.

This factsheet was updated in October 2011.