July 2023

**Teaching resource**

Consent

Age of consent

Sexting

Cyberbullying

## Do you need this booklet in a different format?

Please go to [www.legalaid.vic.gov.au](https://www.legalaid.vic.gov.au/) and search *Sex, young people and the law*. You can also phone (03) 9269 0234 and ask for Community Legal Education. We can talk with you about what you need.

**Produced by Victoria Legal Aid**

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### Changes to the law

The law changes all the time. To check for changes you can visit our website, use our Legal Help Chat or phone us.

### Victoria Legal Aid

We serve the Victorian community by providing information, legal advice and education with a focus on the prevention and early resolution of legal problems.

We prioritise more intensive legal services, such as legal advice and representation, to those who need it the most, using evidence to inform what we do. We also recognise the connections between legal and social issues in the way we do our work and advocate for change.

We work to address the barriers that prevent people from accessing the justice system, by participating in systemic reforms and strategic advocacy.

For free information about the law and how we can help you:

* visit our website [www.legalaid.vic.gov.au](https://www.legalaid.vic.gov.au/)
* use our Legal Help Chat on the website, Monday to Friday, 8 am to 6 pm, excluding public holidays
* phone Legal Help on 1300 792 387, Monday to Friday, 8 am to 6 pm, excluding public holidays. For business queries phone (03) 9269 0234.

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# About this teaching resource

Victoria Legal Aid’s *Sex, young people and the law* program is designed to support educators, teachers and lawyers. It can help you deliver legal education to young people on their rights and responsibilities when it comes to sex and relationships. The content is pitched at young people aged 12 to 16.

The program covers four topics:

* Age of consent
* Consent
* Cyberbullying
* Sexting.

Loddon Campaspe Community Legal Centre and the Community Legal Education (CLE) team at Victoria Legal Aid developed the initial *Sex, young people and the law* education program.

This teaching resource incorporates the following teaching tools:

* session plans
* legal background notes
* activities
* educational videos.

You can access these tools at [www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit](http://www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit).

The session plans for each topic contain basic legal information and key messages to guide your session. You can adapt the plan to suit the needs of participants and the time allocated.

The legal background notes will help you prepare your session and strengthen your legal knowledge on the topic. It is not expected that you will read these notes aloud in your session.

The activities can be copied and handed out. The activity answers will help you prompt correct responses from participants during the activities.

More information

Please emailCommunity Legal Education, Victoria Legal Aid at [cle@vla.vic.gov.au](mailto:cle@vla.vic.gov.au) or call (03) 9269 0234 and ask for Community Legal Education.

# Resilience, Rights & Respectful Relationships curriculum

For Victorian teachers using the *Resilience, Rights and Respectful Relationships* (RRRR) materials, you may want to use elements of *Sex, young people and the law* to support or extend session plans and activities in the RRRR resources.

We have identified the following links for levels 7–12.

RRRR – Level 7–8 Learning Materials *Sex, young people and the law*

|  |  |
| --- | --- |
| **What** | **Legal content** |
| Topic 8: Positive gender relations, *Activity 2: Critical thinking about gender-based violence within sexual imagery*, pages 84–85 | **Sexting**, page 36  **Cyberbullying** (includes information about sexual harassment), page 55 |

*Building Respectful Relationships* –   
recommended for level 9–10 *Sex, young people and the law*

|  |  |
| --- | --- |
| **What** | **Legal content** |
| *Understanding sexual harassment*, pages 28–29  *What is sexual harassment?*, handout 16, page 69  Sexual harassment survey, page 70  *What’s the legal situation with sexual harassment?*, handout 18, page 71 | **Sexting**, page 36  **Cyberbullying** (includes information about sexual harassment), page 55 |
| *Consent and the law*, pages 90–93  *Barriers and enablers to consent in relationships*, pages 94–98  *Consent and the law*, handout 10, page 123  *Free agreement?*, handout 11, page 124  *Consent cards*, handout 12, pages 125­–26  *Doing consent*, handout 13, page 127 | **Consent**, page 5  **Age of consent**, page 20 |

*Building Respectful Relationships* –   
recommended for level 9–10 (cont.) *Sex, young people and the law*

|  |  |
| --- | --- |
| **What** | **Legal content** |
| *Checking for consent*, page 128  *Doing consent*, teachers’ copy, handout 14,  page 129 | **Consent**, page 5  **Age of consent**, page 20 |
| *Developing skills to build respectful relationships*, pages 176–78  *Sexting scenarios*, handout 8, page 200  *Sexting scenarios – considerations*, handout 9, page 201  *So how do we deal with it?*, handout 10, page 202  *Discussion points for teachers*, handout 11,  page 203 | **Sexting**, page 36  **Cyberbullying** (includes information about sexual harassment), page 55 |

RRRR – Level 11–12 Learning Materials *Sex, young people and the law*

|  |  |
| --- | --- |
| **What** | **Legal content** |
| Topic 8: Positive gender relations, *Activity 2: Attitudes associated with gender-based violence*, pages 93–98 | **Consent**, page 5  **Age of consent**, page 20  **Sexting**, page 36  **Cyberbullying** (includes information about sexual harassment), page 55 |

# Before you begin

## Supporting materials

These materials are all available at [www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit](https://www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit):

* teaching resource
* videos
* activities (you will need to print copies)
* wallet cards (consent, age of consent, sexting and cyberbullying).

## Time allocation

Each session plan is for 60 minutes. You can adapt this to suit the needs of different groups and the time available. If your session is longer than 60 minutes, you can run extra activities. If it is shorter, consider running only one activity and adjust the time allocated to each task.

## Technology

You will need a laptop and projector to show videos. If you don’t have internet connection and would like a DVD, email [cle@vla.vic.gov.au](mailto:cle@vla.vic.gov.au) or call (03) 9269 0234 and ask for Community Legal Education.

## Things to consider

### Sensitive content

The content of this session may be directly relevant for people who have had personal experiences relating to the topic and may trigger strong reactions or distress. The term ‘rape’ may come up. If you are not the group’s usual classroom teacher, discuss this with the teacher beforehand.

Prior to the session, alert the wellbeing staff at the school so they know when the session will be running. Consider whether people can choose to sit out or leave during the class. Give the students information about where to go for support if they need it. Refer to the ‘Where to get help’ section on page 66 for the contact details of local support services.

### Personal disclosures

Ask participants not to discuss personal details and situations in the session. It is important to create an open environment where people feel free to ask questions. But personal disclosures may be subject to mandatory reporting or failure to disclose requirements, and should be left for private discussion.

### Using real-life examples

If you are a lawyer, use real-life stories from your own work where possible (without disclosing any client information). This will illuminate the law and engage participants in discussion.

# Header picture: Sex young people and the law logo.Consent

## Session plan

### Learning outcomes

At the end of the session participants should have increased knowledge of:

* laws about consent
* consequences of breaking these laws
* where to get help.

### Materials

These materials are all available at [www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit](https://www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit).

You will need:

* internet connection to play the *Consent or Tea Consent (clean)* videos or a DVD
* Legal background notes (pages 12–15)
* copies of Activities: Consent (pages 16–18)
* *Consent* wallet cards (order online at [www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit](https://www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit))
* pens and paper.

### Introduction

Time allocation: five minutes

Introduce yourself

* If you are a guest presenter, briefly describe your role and where you work.
* Note on the whiteboard where students can get more information: Victoria Legal Aid, the Centre for Sexual Assault and Kids Helpline (see ‘Where to get help’ section on page 67).

Lay the ground rules

* Explain that the session is going to define the law as it relates to sexual consent and that there may be things discussed that make people feel uncomfortable or may be upsetting.

People can choose not to participate in the session at any time. Explain where they can go to get support if needed (for example, a health and wellbeing counsellor).

* Explain you are not there to judge people on their relationships or behaviour but to provide information to help them make educated choices.
* Ask that participants do not share any personal information or experiences. If they need advice about a specific situation, they should speak to a teacher or support service afterwards.
* Ask if there are any questions.

Introduce the topic

* Write ‘Consent’ on the whiteboard.
* Activity: Ask the participants to define what they think consent is. Write their answers on the whiteboard.
* Define consent as ‘free and voluntary agreement’.
* Explain that the law in Victoria says that a person must check that anyone else involved freely and voluntarily consents (chooses to agree) to sexual activity.
* Explain to participants that they must never assume that someone else consents at any time during sexual activity. There must be ongoing communication and decision-making between each person involved in any type of sexual activity and anyone can withdraw consent at any time.

Provide context for the session

* Explain that consent laws exist to stop people being taken advantage of by others – for example, by people in positions of power.
* Explain that the consequences of these laws are real and can have long-lasting effects.

### Video option 1: *Consent*

Time allocation: 10 minutes

**Video synopsis:** Jimmy is 15 and Carla is 14. Jimmy stayed over at Carla’s house and they wake up in bed together the next morning. Carla seems upset. Jimmy tells Carla he is sorry about what happened the night before but that he couldn’t help what he did because he thinks she is super-hot. Carla tells Jimmy she is upset with him because he went ahead and did stuff without asking her first. Jimmy says he thought she liked having sex with him anyway.

Ask the group to consider the following questions while they watch the video:

* Do you think Carla consented to having sex with Jimmy?
* Do you think Jimmy believed Carla gave consent?
* Did Jimmy take any steps to actively check that Carla gave consent?
* Do you think it was reasonable for Jimmy to believe Carla gave consent? Why or why not?
* What could Jimmy have done differently?

### Video option 2: *Tea Consent* (clean version)

Time allocation: 10 minutes

**Note**: There are two versions of the video on YouTube. A version without swearing and a version with swearing*.* Check to make sure you are showing the version you prefer.

**Video synopsis:**using making a cup of tea as an analogy, the presenter introduces concepts of consent, withdrawal of consent and inability to consent while asleep or unconscious.

Ask the group to consider the following questions while they watch the video:

* How does each point relate to a person’s consent to a sexual act?
* How does the video explain free and voluntary consent using the idea of a cup of tea?
* How does the video explain what consent does not look like using the idea of a cup of tea?
* How does the video explain how a person might withdraw their consent using the idea of a cup of tea?
* Discuss what is included in the legal definition of consent and what laws might be broken if someone performs a sexual act without having the other person’s consent.

### What does the law say?

Time allocation: 15 minutes

What is consent?

* free and voluntary agreement
* a shared understanding between people
* words or body language
* something that can be withdrawn at any time
* circumstances in which there is no consent include:
* if there is force or a fear of force
* if the person fears harm of any type to themselves or someone else
* if the person is threatened or coerced in any way
* if the person is unlawfully detained (illegally locked up somewhere)
* if the person is asleep, unconscious or so heavily affected by alcohol or another drug they have no way of freely agreeing (even if they gave consent when they were less affected by alcohol or another drug)
* if the person has no way of understanding the sexual nature of the act
* if the person was mistaken about the sexual nature of the act or who the other person was
* if the person mistakenly believed the act was for medical reasons
* if the person believes a condom is being used but the condom is tampered with or removed without their consent (often referred to as stealthing)
* if the person does not say or do anything to show consent
* if the person gives consent to the sexual act at first but then no longer consents. Any person involved can change their mind and withdraw consent at any time during sexual activity, even if they have previously said yes.

It is up to the person who wants to do something sexual to check there is consent from anyone else involved before they do anything.

It is never okay for the person who wants to do something sexual to assume that anyone else involved consents. If someone does not speak up or say ‘no’ or try to physically resist, this does not mean they consent to what is happening.

The law in Victoria places responsibility on each individual person participating in a sexual act to seek consent from any other person involved. The law says that a person must actively check that anyone else involved freely and voluntarily consents to sexual activity. If there are no clear signals indicating whether a person is consenting, the law in Victoria says there is no consent.

A person who wants to do something sexual cannot assume that because someone else has agreed to one type of sexual activity, such as kissing, that their agreement is ongoing or covers other types of sexual activity, such as sexual touching. There must be ongoing communication and decision-making between each person involved in any type of sexual activity. Anyone can withdraw consent at any time.

The person who wants to do anything sexual always needs to check for consent, whether it is the first time having sex or ongoing with someone they’ve had sex with before.

Non-consensual removal, tampering or non-use of a condom (stealthing)

There is no consent when a person has given consent on the basis that a condom will be used during sexual activity if the other person tampers with the condom or removes the condom during sex without asking for permission. This is often referred to as ‘stealthing’.

There is no consent when a person has given consent on the basis that a condom will be used during sexual activity if the other person then intentionally does not use a condom.

Whenever consent is given for sexual activity with a condom, the act of tampering, removing or not putting on a condom means that there is no longer consent.

What offences relate to consent?

* sexual assault: when someone touches someone else in a sexual way without their consent
* rape: when someone sexually penetrates another person without their consent (sexual penetration is anything that involves a body part (such as a penis, finger or tongue) touching a vagina, anus or mouth and includes penetration to any degree)
* rape by compelling sexual penetration: when someone makes someone else sexually penetrate them, themselves or a third person without their consent
* sexual assault by compelling sexual touching: when someone makes someone else touch them, themselves or someone else in a sexual way without their consent
* ‘acting in concert’: when someone encourages a person to rape or sexually assault someone else.

What happens if someone breaks the law?

Sexual offences are serious. The police may get involved and they may investigate.

Penalties for the accused person might include:

* court
* prison (up to 25 years for rape and 10 years for sexual assault)
* criminal record
* Sex Offenders Register.

Discuss how this might affect the person in the future.

Refer to the egal background notes on page 11 for more information.

### Activity: True or false

Time allocation: five minutes

**Read out each set of statements and then ask participants to identify if the statement is true or false.** After they respond, give the correct answer.

1. **Touching someone in a sexual way without their consent is called sexual assault.   
   True.**
2. **Oral sex is not sexual penetration under the law.   
   False.** The definition of sexual penetration includes any object, not just a penis, touching a vagina, anus or mouth.
3. **If someone is asleep they cannot consent to sex.   
   True.**
4. **To show you do not consent to sex, you have to say ‘no’.   
   False.** Consent (or non-consent) can be communicated verbally or through body language.
5. **You can withdraw your consent to sex at any time, even if it has already started.   
   True.**
6. **You can consent to one thing, like sexual touching, but that doesn’t mean you consent to other things like oral sex or sex without a condom.   
   True.**
7. **If you are 15, you can’t consent to sex with someone who is more than 24 months older than you.   
   True.**
8. **You can’t get in trouble for watching and egging on someone to sexually assault someone else because you weren’t the one doing the act.   
   False.** Encouraging someone to sexually assault another person means you are involved in that crime. You could face the same charge and penalty as the person who did the act.
9. **A person accused of a criminal offence has the right to be treated as innocent until proven guilty.   
   True.**
10. **If someone is found guilty of rape, they could go to jail for 25 years.   
    True.**
11. **If someone is found guilty of sexual assault they could go to jail for 10 years.   
    True.**
12. **People under 18 cannot be put on the Sex Offenders Register.   
    False.** If you are under 18 you can still be put on the Sex Offenders Register for up to seven and a half years.

### Where to get help

Time allocation: five minutes

**Hand out the Consent wallet cards.** There is blank space on the cards to add details of local services. Refer to ‘Where to get help’ on page 67.

If someone has been hurt, they can:

* tell someone they trust
* contact support services such as Centre Against Sexual Assault, Kids Helpline, Victims Support Agency
* contact a legal service such as Victoria Legal Aid, Youthlaw or a local community legal centre
* contact the police.

### Activity: Discussing consent

Time allocation: 15 minutes

* Select one of the consent activities on page 16. If you have time, run two activities.
* Divide participants into groups of three to four. Each group should have a note-taker and a reporter.
* After 10 minutes ask groups to report their answers. Select a different group to answer each question.
* Refer to the legal background notes and activity answers for correct answers.

### Key messages

Time allocation: 5 minutes

**Reiterate key messages of the session by asking the following questions.** Refer to the legal background notes for extra information and correct answers.

* **What is consent?**

Free and voluntary agreement, and a shared understanding between people.

* **Whose responsibility is it to check for consent?**

It is up to the person who wants to do anything sexual to check there is consent before they do anything.

* **What is stealthing and is it against the law?**

Stealthing is when someone removes or tampers with a condom during sexual activity without asking for permission from the other person. This is against the law in Victoria. There is no consent when someone has given consent on the basis that a condom will be used if the other person removes or tampers with the condom. There is no consent when someone has given consent on the basis that a condom will be used of the other person then intentionally does not use a condom.

* **Can consent be taken away?**

Yes. Consent can be taken away at any time.

* **What sexual offences relate to consent?**

Sexual penetration without consent is rape. Other sexual acts without consent are sexual assaults.

* **Where can you go for help and support?**

Centre Against Sexual Assault, Kids Helpline, Victims Support Agency, Victoria Legal Aid, a community legal centre.

## Legal background notes

### What is consent in relation to sexual relationships?

Consent is free and voluntary agreement. This means a clear, shared understanding between people that they give permission for something to happen.

The law says that to provide consent to sexual acts, like sex or sexual touching, a person must understand the nature of what they are consenting to. If they are incapable of understanding because of their young age, or if they are asleep, or really affected by alcohol or drugs, they cannot give consent.

It is not just about saying ‘yes’ or ‘no’ – there are other ways that people can show they are consenting or not consenting. It could be something physical, for example body language. A person does not have to say ‘yes’ to be consenting or say ‘no’ to not be consenting.

You can take away your consent at any time, even in the heat of the moment. Checking for consent is a personal responsibility. The law in Victoria says consent is about making sure that every person is comfortable about what is happening and is freely and voluntarily choosing to agree to any type of sexual activity. It should be clear that everyone involved agrees. So, if in doubt, always check in with the other person. This may seem awkward but it creates a safe atmosphere for everyone.

A person cannot consent to sex if they are outside the age of consent laws, which say:

* people under 12 years old cannot consent to sex at all
* people 12 to 15 years old cannot consent to sex with someone 24 months older than them
* people 16 to 17 years old cannot consent to sex with someone who is in a position of care or authority over them. See the **Age of consent** topic (pages 20–35).

Real-life cases

*Yankovski* (2007): This case involved a young woman and two young men, who had all had a lot to drink. The woman claimed she had had so much to drink that she passed out. One of the men then had sex with her while she was unconscious and continued to have sex with her when she woke up and told him to stop. The man was found guilty of rape and sentenced to five years in prison. This case highlights two important consent issues: that consent cannot be freely given by someone who is unconscious or unaware because they are really drunk and that consent can be withdrawn at any time. As soon as consent is removed, the act becomes rape. The legal citation for this case is: *R v Yankovski (2007) 17 VR 315.*

*Gallienne* (1964): A young woman and her husband lived in a house owned by a man named Gallienne. The woman was home alone one night, in bed. In the dark, while she was asleep, Gallienne got into bed with her and had sex with her. When she awoke, and became aware of what was happening, she allowed it to continue because she thought it was her husband. When she realised it wasn’t, she ran screaming out of the house. Gallienne argued that she was consenting to sex. The court decided that the mistaken identity of Gallienne meant there was no valid consent and he was found guilty of rape. The legal citation for this case is: *R v Gallienne [1964] NSWR 919.*

### 

### Can consent be withdrawn?

A person can take away their consent at any point. This can be verbally with words, physically through actions or body language or even with words like, ‘I’m not sure’. It can be taken away by a person’s sudden inability to communicate, for example, if they become affected by drugs or alcohol and they pass out.

Consent can be given to one sexual activity but not another. For example, if someone consents to another person touching their breasts, this does not mean they consent to sex. In the video, if Carla agreed to some form of sexual touching with Jimmy that doesn’t mean she consents to other forms of sexual touching or sex. Even if she agreed to sex or sexual touching at first, she can still change her mind and take away her consent at any time. Jimmy must stop as soon as Carla takes her consent away.

### What offences relate to consent?

Rape and rape by compelling sexual penetration

Rape is a sexual offence. Rape is when someone sexually penetrates another person:

* without that other person’s consent and
* without having a reasonable belief that the other person is consenting.

Rape by compelling sexual penetration is when someone makes someone else sexually penetrate them, themselves or a third person:

* without their consent and
* without having a reasonable belief that the other person is consenting.

**Sexual penetration** is defined by the law as any body part (such as a penis, finger or tongue) or any object entering a vagina, anus or mouth. It includes penetration to any extent.

**Reasonable belief** is not clearly defined because the law says it depends on the circumstances. The circumstances can include the steps someone takes to find out if the other person freely agrees.

In the video, if Jimmy had sex with Carla without her free and voluntary agreement then he could be charged with rape. If Jimmy claims he had a reasonable belief Carla was consenting, the court would need to decide if Jimmy’s belief was reasonable. The court would consider what steps Jimmy took to find out if Carla freely agreed and whether it was reasonable for him, in the circumstances, to believe she freely agreed.

Sexual assault and sexual assault by compelling sexual touching

A person commits sexual assault if they touch another person in a sexual way:

* without their consent and
* without having a reasonable belief the other person is consenting.

Sexual assault does not involve penetration.

Sexual assault by compelling sexual touching is when someone makes someone else touch them, themselves or someone else in a sexual way:

* without their consent and
* without having a reasonable belief that the other person is consenting.

Whether someone has a reasonable belief that another person consents depends on the circumstances and can include any steps taken to find out if that person gives consent.

Sexual harassment

Sexual harassment is when someone makes an unwelcome sexual advance or request, or behaviour of a sexual nature, and it is reasonable the other person would be offended, humiliated or intimidated. This can include saying sexual things to a person, making sexual gestures to them, or subjecting them to an act of physical intimacy. Sexual harassment is against the law in areas of public life, such as at school and at work.

Acting in concert

Encouraging another person to rape or sexually assault someone could also lead to a charge of rape or sexual assault on an ‘acting in concert’ basis.

This could mean being charged with the same crime with the same penalty as the person who did the act. For rape, it could be up to 25 years in prison.

Encouraging an act can include words or actions, such as recording the incident on a phone.

### The video – *Consent*

In the video, Jimmy and Carla are both over 12 and Jimmy is less than 24 months older than Carla. That means both Jimmy and Carla are old enough to give consent to sex or other sexual acts.

However, did Carla consent to what Jimmy did?

We don’t know exactly what happened between Jimmy and Carla the night before but what if:

* Carla didn’t say or do anything to say no?
* Carla was drunk, affected by drugs, asleep or unconscious?
* Jimmy forced or scared Carla into it?

If Carla didn’t say or do anything to say no, Jimmy can’t assume she gives consent. If Carla did not make it clear, it is up to Jimmy to be sure Carla gives consent. The best way for Jimmy to be sure is to just ask Carla if she is okay with what he wants to do.

If Carla was asleep, unconscious or so affected by drugs or alcohol that she didn’t know what was happening or she couldn’t say or do anything to show consent, then Jimmy can’t assume she gives consent. A person cannot give their free and voluntary agreement to do something if they are drunk, drugged, asleep or unconscious. Even if they first gave consent when they were not affected.

If Jimmy uses force or uses threats to make Carla perform a sexual act with him, this may be sexual assault. If a person is forced or scared into doing something, then they do not freely and voluntarily agree to that act. If Jimmy said he had a reasonable belief Carla freely agreed, the court would need to decide if Jimmy’s belief was reasonable.

How might the police get involved?

If a crime does happen police may get involved because Carla might:

* tell the police
* confide in a friend and the friend may tell the police
* tell her parents, who may tell the police
* see a school counsellor or her teacher and they may have to tell the police.

If the police investigate, they would look for evidence to build a case against Jimmy. Evidence is anything that may prove Jimmy committed the offence.

What happens to the accused?

The police would interview Jimmy (the accused). If the police believe they have a strong case against Jimmy, they could charge him and take him to court. The court would decide whether Jimmy is guilty of breaking the law.

If Jimmy is found guilty of sexual assault or rape, he may get a criminal record and a jail sentence. Jimmy could also be put onto the Register of Sex Offenders. Young people under 18 can be placed on the register for up to seven and a half years, and adults for life.

Jimmy has rights throughout the police and court process. Jimmy has the right to be treated fairly by the police and the right to speak with a lawyer before being interviewed by police. Jimmy has the right to remain silent, which means he does not have to tell police anything that might be used against him as evidence.

How might this affect a person in the future?

Having a criminal record or jail sentence can make it hard for a person to get certain jobs or travel in the future.

If Jimmy was put on the Register of Sex Offenders, he would have to report regularly to the police and would not be able to do any child-related work.

**Header picture:
Sex young people and the law logo.**

## Activities: Consent

**Task:** In groups of three to four people, discuss the case study and answer the questions. Nominate different people in the group to be chair of the discussion, speaker, timekeeper and note-taker.

### Activity one – The couple

**Case study:** Malika and James have been together for two years. They have had sex a couple of times and both enjoyed the closeness and intimacy of it. Last weekend they went to a party and Malika drank more than she usually would. James suggested that they get away from the crowd and head up to the bedroom. In the bedroom, James started kissing and touching Malika. She seemed to be enjoying herself, she kissed him back, smiled and said: ‘Don’t stop’. After kissing for a while she passed out. James could clearly see that she was no longer capable of responding to conversation. He continued kissing her and then took off her top and started touching her breasts. Malika woke up and was frightened by what was going on.

**Questions:**

* What did Malika give James consent to do?
* Did James do anything he didn’t have consent to do?
* If Malika stopped giving consent, at what point did this happen?
* Where can Malika go for help?
* Where can James go for help?

### Activity two – Flirty

**Case study**: Anh is the new girl at school and is being talked about already. The rumour is that she started having sex in primary school. Anh doesn’t deny this, and both guys and girls find Anh funny and flirtatious. At school camp, she leads a group away from the cabins to a secluded spot in the nearby forest. The group start drinking and playing spin the bottle. Anh kisses only girls all night. A few of the guys dare her to go further but when she tells them no, they think she’s being flirty. A few of the guys start grabbing Anh. One of them has sex with her, while the others watch.

**Questions:**

* What does the law say about consent in this situation?
* Do you think Anh’s flirty behaviour is responsible for what happened?
* What do you think will happen to the people who stood by and watched?
* What can happen if the police find out?
* Where can Anh go for help?

## Activity answers

### Activity one – The couple

**Case study:** Malika and James have been together for two years. They have had sex a couple of times and both enjoyed the closeness and intimacy of it. Last weekend they went to a party and Malika drank more than she usually would. James suggested that they get away from the crowd and head up to the bedroom. In the bedroom, James started kissing and touching Malika. She seemed to be enjoying herself, she kissed him back, smiled and said: ‘Don’t stop’. After kissing for a while she passed out. James could clearly see that she was no longer capable of responding to conversation. He continued kissing her and then took off her top and started touching her breasts. Malika woke up and was frightened by what was going on.

Question: What did Malika give James consent to do?

Malika gave James consent to kiss her, not for him to undress her or touch her breasts. As Malika had passed out from the alcohol, she had no way of providing her consent to him beyond the initial consent to kissing.

**Question: Did James do anything he didn’t have consent to do?**

Yes. James should have been aware that Malika was not consenting to anything further after she passed out. Even though they had been going out for two years and had had sex previously, James does not have permission to presume consent to every sexual interaction they have. Especially where they have been drinking alcohol. He should have been respectful of Malika’s inability to consent and he should have stopped.

**Question: If Malika stopped giving consent, at what point did this happen?**

When James could clearly see that Malika was no longer capable of responding to conversation, this is the point he should have been aware she was passed out and incapable of consenting to further acts.

**Question: Where can Malika go for help?**

Malika may need counselling or support to help her cope with this situation. She can contact the Centre Against Sexual Assault (CASA), which has 24-hour counselling, on 1800 806 292.

**Question: Where can James go for help?**

James can contact Youthlaw, (03) 9113 9500, Victoria Legal Aid, 1300 792 387, or his local community legal centre for help.

### Activity two – Flirty

**Case study**: Anh is the new girl at school and is being talked about already. The rumour is that she started having sex in primary school. Anh doesn’t deny this, and both guys and girls find Anh funny and flirtatious. At school camp, she leads a group away from the cabins to a secluded spot in the nearby forest. The group start drinking and playing spin the bottle. Anh kisses only girls all night. A few of the guys dare her to go further but when she tells them no, they think she’s being flirty. A few of the guys start grabbing Anh. One of them has sex with her, while the others watch.

**Question: What does the law say about consent in this situation?**

Anh’s sexual reputation or her previous ‘flirty’ attitude with others does not give anyone the right to have sex with her without her consent. This was a situation which she had clearly not consented to.

Consent must be free and voluntary agreement. This means there should be clear verbal or physical communication and a shared understanding between people. Here, Anh was grabbed and there is no indication of shared understanding.

**Question: Do you think Anh’s flirty behaviour is responsible for what happened?**

Anh has a right to behave however she likes. She has the right to flirt, without ever being to blame for someone having sex with her without her consent. There were clear signs of lack of consent. Anh’s flirty behaviour was in no way responsible for what happened.

**Question: What do you think will happen to the people who stood by and watched?**

The bystanders could be charged with rape on an ‘acting in concert’ basis if they encouraged or facilitated the rape. This could be by watching. The maximum penalty for this crime is 25 years in prison.

**Question: What can happen if the police find out?**

If the police get involved, it is likely that the guy who had sex with Anh without her consent will be charged with rape. The maximum penalty for rape is 25 years in prison.

**Question: Where can Anh go for help?**

Anh may need counselling or support to help her cope with this situation. She can contact the Centre Against Sexual Assault, which has 24-hour counselling, on 1800 806 292.

### Activity three – Signals

**Task**: discuss with participants some examples of the verbal and non-verbal signals that may indicate consent or the absence of consent, and the kind of language and questions that can be used for checking in.

An important part of preventative education is increasing the skills of young people to communicate with each other about consent, both verbally and non-verbally.

The law in Victoria requires people to check for consent regularly during any sexual activity. A person must have a reasonable belief that everyone involved freely and voluntarily consents at all times during sexual activity. For their belief in consent to be reasonable, a person must have taken steps by saying or doing something to find out if the other person consents.

**Building skills to talk about sexual consent**

**Question**: What are some verbal ways a person might indicate they freely and voluntarily agree to touching?

**Possible answers**: Yes, I like that, I’d love to, more.

**Question**: What are some non-verbal ways someone might indicate they freely and voluntarily agree to touching?

**Possible answers**: holding eye contact, moving closer, taking off clothes, smiling..

**Question**: What are some verbal ways a person might indicate they don’t freely and voluntarily agree to touching?

**Possible answers**: No, I don’t like that, slow down, that hurts, ouch, can we wait?

**Question**: What are some non-verbal ways someone might indicate they don’t freely and voluntarily agree to touching?

**Possible answers**: not meeting the other person’s eyes, pulling away, freezing up, pushing away, looking worried or distant or detached, body closes up.

**Question**: What are some words you can use to check for consent if you want to touch someone?  
**Possible answers**:

* Can I kiss you?
* Do you I mind if I touch you?
* Would you like to get physical?
* Do you want to have sex?

**Note**: participants might offer phrases like ‘Are you enjoying this?’ or ‘Should I keep going?’ or ‘Do you like it when I touch you like this?’. While these aren’t wrong, it’s important to point out the difference between checking for consent before touching and while you are touching someone else. While both will be appropriate at different times, it’s always safer for young people to make sure they check before touching someone else.

**Question**: What if you check in, but get no signals or response at all?

**Answer**: If you think you are getting no signals indicating whether the other person is consenting, then the law says this is taken as the absence of consent. So, if you’re not sure, then it’s a ‘no’.

**Question**: What if it feels awkward to talk about consent?

**Answer**: It can feel awkward or embarrassing checking in sometimes but it can also be sexy. It can feel frustrating if you expected to have sex but the other person doesn’t want to. But feeling these emotions is much better than committing a sexual crime like rape or sexual assault.

Header picture:
Sex young people and the law logo.

# Age of consent

## Session plan

### Learning outcomes

At the end of the session participants should have increased knowledge of:

* laws about age of consent
* consequences of breaking these laws
* where to get help.

### Materials

These materials are all available at [www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit](https://www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit).

You will need:

* internet connection to play the *Baker boy* video or a hard copy DVD
* Legal background notes (page 26–28)
* copies of Activities: Age of consent (pages 29-33)
* copies of Age of consent graphs (pages 34-35)
* *Age of consent* wallet cards (order online at [www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit](https://www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit))
* pens and paper.

### Introduction

Time allocation: five minutes

Introduce yourself

* If you are a guest presenter, briefly describe your role and where you work.
* Note on the whiteboard where students can get more information: Victoria Legal Aid, the Centre for Sexual Assault and Kids Helpline (see ‘Where to get help’ section on page 67).

Lay the ground rules

* Explain that the session is going to define the law as it relates to the age of sexual consent and that there may be some things discussed that make people feel uncomfortable or may be upsetting. People may choose not to participate in the session at any time. Explain where they can go to get support if needed (for example, wellbeing staff).
* Explain you are not there to judge anyone on their relationships or behaviour but to provide information to help them make educated choices.
* Ask that participants do not share any personal information or experiences. If they need advice about a specific situation, they should speak to a teacher or support service afterwards.
* Ask if there are any questions.

Introduce the topic

* Explain that there are some situations where even if both people have made a free and voluntary agreement, the difference in their ages means that they cannot legally consent.
* Ask the students why they think these laws exist.

Provide context for the session

* Explain that age of consent laws exist to stop young people being taken advantage of by older people.
* Provide a relevant real-life example that you know of, or use the example provided on page 27, to show that consequences of age of consent laws are real and can have lasting effects.

### Activity: Legal quiz

Time allocation: 10 minutes

**Nominate one side of the room as TRUE and the other side as FALSE. Ask students to stand up and move to the side of the room that best fits the following statements.**

After you have asked each question, briefly explain the correct answers.

1. **True or false: legally, you can have sex at any age, if you decide you are ready to.**

**False.** There are age of consent laws that say how old you must be to legally consent to sex.

1. **If you are 15 years old, you can legally consent to having sex with an 18-year-old.**

**False**. There is more than 24 months’ age difference. This session will explain this rule.

1. **It is legal to show an 11-year-old pornography, if they want to see it.**

**False**. It is not okay for anyone to perform a sexual act with, or in front of, anyone under 12. This includes showing pornography to them – even if they want to see it.

1. **People under 18 can be put on the Register of Sex Offenders.**

**True**. People under 18 who have committed sexual offences involving a child can be included on the register for up to seven and a half years.

1. **You need to tell the police if you get a new tattoo if you’re on the Register of Sex Offenders.**

**True.** The rules placed on people listed on the Register of Sex Offenders are very restrictive and can seriously impact their lives. You might need to give regular urine samples, tell the police if you change your physical appearance, your phone number, move house, etc.

1. **Having a criminal record might restrict your opportunities to travel.**

**True.** It may make it harder to travel to some countries and limit your job opportunities.

1. **If you’re 17, you can legally consent to having sex with an 18-year-old student teacher.**

**False.** Because the teacher is in a position of care you can’t legally consent.

1. **If you were at schoolies week on the Gold Coast, the same rules about sex and age of consent would apply as they do at home in Victoria.**

**False.** Different states have different laws. For example, in Queensland 16 is the age of consent for sex. There is no 24-month rule in Queensland, so if you are under 16 you cannot legally consent to having sex, even with someone your own age.

### What does the law say?

Time allocation: 15 minutes

What are ‘age of consent’ laws?

* Age of consent laws are about how old a person needs to be before they can legally consent to having sex or doing sexual acts.
* These laws may be different in other states and territories.
* In Victoria, these laws are the same for all people, including people who are LGBTIQA+ (lesbian, gay, bisexual, trans and gender diverse, intersex, queer, asexual, or people who might prefer to use a different term to describe their identity).
* In Victoria, there are different rules for people under 12, people aged 12–15 years, and people aged 16–17 years.

Activity

Draw three columns on the whiteboard, separated into:

|  |  |  |
| --- | --- | --- |
| **Under 12s** | **12 to 15** | **16 to 17** |
| Never okay | 24-month rule | Position of care |

Using the information provided below, briefly explain each category.

Laws for under 12s

It is never okay for a person under 12 years old to have sex, or for another person to sexually touch or perform a sexual act with or in front of them. It is not a defence even if you honestly and reasonably believed they were 12 or older.

**Laws for 12- to 15-year-olds**: **the 24-month rule**

It is against the law for a person to have sex or do sexual acts with, or in front of, someone who is more than 24 months younger than them. So, if there is more than 24 months’ age difference (even by just one day) between people, they are outside the age of consent.

If the participants in the session are within the 12 to 15 age range, hand out copies of the Age of consent 24-month rule graph for 12- to 15-year-olds. Provide example pairs of ages and ask participants whether they are within the age of consent. Participants can find one age on the vertical axis and the other on the horizontal axis of the graph. If the two ages are met with a cross, they are outside the age of consent. For example, if Caitlin is 14 years and nine months, is it legal for her to do sexual acts with Izzy, who is 13 years and four months?

Laws for 16- to 17-year-olds

* A 16- or 17-year-old can consent to having sex with someone the same age, someone older, or someone younger, as long as they are no more than 24 months younger.
* But it is against the law for an older person to have sex with a younger person if they are in a position of care or responsibility over the younger person (for example, a teacher, carer or sports coach). The law says the younger person, even if they are 16 or 17, cannot legally consent.
* It is not an offence if the older person honestly believed the younger person was 16 or older, however they would need to be able to prove this in court.

If the participants in the session are within the 14 to 17 age range, hand out copies of the Age of Consent 24-month rule graph for 14- to 17-year-olds. Provide example pairs of ages and ask whether they are within the age of consent. Participants can find one age on the vertical axis and the other on the horizontal axis of the graph. If the two ages are met with a cross, they are outside the age of consent. For example, if Marie is 17 years and six months, is it legal for her to do sexual acts with Jonah, who is 15 years and five months?

What offences relate to age of consent?

* ‘Sexual penetration of a child under the age of 16’: any body part (not just a penis) or object entering a vagina, anus or a penis entering a mouth. It includes penetration to any degree.
* ‘Sexual assault of a child under the age of 16’: sexual touching or activity that a reasonable person would think was unacceptable.
* It does not matter if the young person consented to sexual activity if the law says the age difference is too big.

### What happens if someone breaks the law?

Police might get involved and investigate the situation. Possible penalties and consequences for the accused:

* having to go to court
* prison (up to 25 years for sexual penetration of a child under 12; 15 years for sexual penetration of a child under 16; 10 years for sexual assault of a child under 16)
* a criminal record
* being put on the Register of Sex Offenders.

Discuss how this might affect the person in the future.

### Video: *Baker boy* (optional)

Time allocation: five minutes

**Video synopsis**: Paulo, Jasmine and Jasmine’s step-mum, Maria, talk about Paulo and Jasmine’s relationship that ended badly. Paulo is 17 and Jasmine is 13 but she told Paulo she was older. They developed a sexual relationship. Later, Jasmine told Paulo her real age and they broke up. Jasmine was heartbroken. Her father suggests calling the police about Paulo and Jasmine’s age difference.

Note: This video is titled ‘Age of consent and the law’ on the Victoria Legal Aid YouTube channel.

**Ask participants to consider these questions while they watch the video:**

* Is there a problem with Paulo and Jasmine’s age difference?
* What do Jasmine’s parents do and what do you think the outcome will be?

### Where to get help

Time allocation: five minutes

**Hand out the *Age of consent* wallet cards to the group.** There is blank space on the cards to add details of local services.Refer to ‘Where to get help’ on page 67.

If someone has been hurt, they can:

* tell someone they trust
* contact support services such as the Centre Against Sexual Assault, Kids Helpline, Victims Support Agency
* contact a legal service such as Victoria Legal Aid, Youthlaw or a local community legal centre
* contact the police.

### Activities

Time allocation: 15 minutes

* Select one of the age of consent activities on pages 29-33. If you have time, run two activities.
* Divide participants into groups of three to four. Each group should have a note-taker and a reporter.
* After 10 minutes ask the groups to report their answers. Select a different group to answer each question.
* Refer to the legal background notes and activity answers for correct answers.

### Key messages

Time allocation: five minutes

Reiterate key messages of the session by asking the following questions. Refer to the legal background notes for extra information and correct answers.

* **What are age of consent laws?**

Laws about how old a person must be before they can legally consent to sex and sexual acts.

* **What is the law for people under 12?**

It’s never okay to have sex with someone under 12.

* **What is the law for 12- to 15-year-olds?**

The 24-month rule applies. It’s not okay to have sex or do sexual acts if the younger person is more than 24 months younger than the older person.

* **What is the law for 16- to 17-year-olds?**

It’s not okay if the older person is in a position of care or authority over the younger person. The 24-month rule applies if the other person is younger.

* **What can happen if the law is broken?**

The police could get involved, and the accused person could go to court.

* **Where can you go for help?**

Centre Against Sexual Assault, Kids Helpline, Victims Support Agency, Victoria Legal Aid, Youthlaw, local community legal centre.

## Legal background notes

### What are age of consent laws?

There are laws about how old a person must be before they can legally consent to having sex or engaging in sexual acts. The law sets these age limits to help protect young people from older people or people in positions of power taking advantage of them.

Age of consent laws in Victoria are the same for all people, including people who are LGBTIQA+ (lesbian, gay, bisexual, trans and gender diverse, intersex, queer, asexual, or people who might prefer to use a different term to describe their identity).

Age of consent laws can be different in other states. It is important for young people to be aware of these differences if they are travelling interstate. Laws about sex and consent are not just about ages. Both people must also freely consent (agree) to sexual acts. See **Consent** starting on page 5.

### What offences relate to age of consent?

In Victoria, there are several sexual offences involving children (people under 18). These include offences relating to sexual penetration and sexual assault when the younger person is not legally old enough to consent.

**Sexual penetration** is any body part (such as a penis, finger or tongue) or any object entering a vagina or anus, or a penis entering a mouth. It includes penetration to any degree.

Sexual assault could involve touching a person in a sexual way, for example, touching another person’s vagina, penis, anus or breasts if they do not consent or if the law says that one person involved is too young.

It does not matter whether the young person said yes or wanted to do to the sexual act. If the ages of the people involved are not within the age of consent laws, it is against the law.

### Under 12 years old

People under 12 years old are too young to legally consent to having sex or sexual acts. Even if the young person says yes and wants to, the laws says they are not legally able to give consent because they are too young.

It is not okay, under any circumstances, for another person to sexually touch or perform a sexual act with or in front of a person under 12. This includes showing pornography to someone under the age of 12. Even if you honestly and reasonably believed that the person was 12 or older you can still be charged, as this is not a legal defence.

### 12 to 15 years old

It is against the law for young people with more than 24 months’ age difference to have sex or do sexual acts, even if they both want to. If one person is more than 24 months older than the other person, the younger person cannot legally consent to sexual penetration with the older person. The older person cannot touch the younger person sexually or perform a sexual act in front of them.

For example, if someone is 13 years and one month and their boyfriend is 15 years and seven months, this breaks the 24-month rule. The 13-year-old cannot legally consent to having sex with the 15-year-old, so the 15-year-old would be breaking the law.

In *Baker boy,* both Jasmine and Paulo seemed to be enjoying the relationship at the time, yet the law says that even if Jasmine agreed to have sex, Paulo was breaking the law. Paulo committed a sexual offence involving a child because of the age difference. Paulo is 17 and Jasmine is 13 – this breaks the 24-month rule. Paulo may have a legal defence if he honestly and reasonably believed that Jasmine was 15 or older, but he would need to be able to prove this to the court.

### 16 to 17 years old

At 16 a person can legally consent to have sex with anyone the same age or older, with some exceptions.

A 16 or 17-year-old can consent to having sex with someone the same age *or* older. The 24-month rule still applies for anyone younger. So, a 16 or 17-year-old can legally have sex with someone younger than them if the age difference is less than 24 months.

But, people aged 16 to 17 cannot legally consent to sexual penetration with someone older than them who is in a position of care or responsibility for them – for example, a sports coach or a teacher.

The person in the position of care could get into a lot of trouble unless they reasonably believed the younger person was 18 or older. That means a youth worker who has a 16-year-old client cannot have sex with the client. But the youth worker may not get into trouble with police if they genuinely thought the young person was 18 or older.

Real-life example

Here is one example of an age of consent case that went to court:

‘Echuca teenager pleads guilty to sex with underage girlfriend’, *Bendigo Advertiser*, 14 October 2014

[www.bendigoadvertiser.com.au/story/2624325/relationship-ends-in-sex-conviction/](http://www.bendigoadvertiser.com.au/story/2624325/relationship-ends-in-sex-conviction/)

An 18-year-old guy and a 13-year-old girl met through Facebook, then met in person and soon became girlfriend and boyfriend. They had sex a few times. Her parents found out they’d had sex and the guy was arrested. He went to court and was charged with sexual penetration of a child under 16. His penalty was a one-year community order for 100 hours of unpaid community work, and he was put on the Sex Offenders Register for 15 years.

### The video – *Baker boy*

How might the police get involved?

Police might get involved because the young person or their parents, a teacher or someone else has been concerned and gone to the police. When a young couple breaks up, the younger person or their parents might go to the police. As seen in *Baker boy*, Jasmine’s dad suggested going to the police when he saw his daughter’s heartbreak and found out that Paulo was 17 years old.

If the police investigate, they would look for evidence to build a case against Paulo. Evidence is anything that may prove Paulo committed the offence.

What happens for the accused?

The police may interview Paulo. If the police believe they have a strong case against Paulo, they can charge him and take him to court. Even if Paulo did not know the rules about age limits, the police can still charge him for committing a sexual offence. ‘I didn’t know the law’ is not accepted as a defence. Paulo may have a defence if he honestly and reasonably believed that Jasmine was 16 or older. However, he would need to be able to prove this to the court.

At court, the magistrate or jury would decide whether Paulo is guilty of breaking the law. The magistrate or jury could only decide that Paulo is guilty if satisfied ‘beyond reasonable doubt’ that he is guilty of the offence.

If he is found guilty, there can be serious consequences. For a sexual offence, this may include a criminal record and often a jail sentence. Being found guilty of:

* sexual penetration of a child under 12 could mean being sentenced to up to 25 years in jail
* sexual penetration of a child between 12 and 16, if the person is more than 24 months older than the young person, could mean up to 15 years in jail
* sexual touching or activity (that goes against community standards of acceptable behaviour) with a child under 16. If the person is more than 24 months older than the child, they could face up to 10 years in jail. It does not matter whether the young person agreed to the sexual activity.

This could make it hard for Paulo to get certain jobs in the future. It may also make it hard for him to travel to some countries.

Paulo could also be put onto the Register of Sex Offenders. This register includes adults sentenced for committing sexual offences against a child. It can also include young people (under 18) being placed on the register for up to seven and a half years. If this happened to Paulo, he would have to report to the police regularly and he would not be allowed to engage in any child-related employment.

Paulo has rights throughout the police and court process. He has a right to be treated fairly by the police and a right to speak with a lawyer before being interviewed by police. He has the right to remain silent, which means he does not have to tell police anything that might be used against him in evidence.

## 

## Header picture: Sex young people and the law logo.Activities: Age of consent

**Task**: In groups of three to four people, discuss the case study and answer the questions. Nominate different people in the group to be chair of the discussion, speaker, timekeeper and note-taker.

### Activity one – The relationship

**Case study**: Brett, 17, and Melissa, 13, were going out. After they broke up on bad terms, Melissa’s parents went to the police about Brett being too old for Melissa. The police charge Brett with a number of offences for sex with a child. Brett is now facing youth detention and possible listing on the Register of Sex Offenders.

**Questions:**

* What does the law say about Melissa and Brett’s relationship?
* Melissa wanted to have sex at the time – does this mean it’s legally okay?
* What are the consequences for Brett? Are they appropriate?
* Where can Brett go for help?

### Activity two – The theatre crush

**Case study**: Wendy is 20. She is employed by the local school to produce a theatre production with the students. Tracey has joined the class. She is 17. Wendy and Tracey start seeing each other socially. Their relationship becomes romantic and they have sex. One of the teachers finds out and decides to report Wendy to the Department of Human Services.

**Questions:**

* What does the law say about Wendy and Tracey having sex?
* Was it okay for the teacher to go to the Department of Human Services?
* If the police get involved, what can happen to Wendy?
* Where can Tracey go for help?

## 

### Activity three – Lunch-time basketball

**Case study:** Michael is 17. He meets Jamal when playing lunch-time basketball together. Jamal is about to turn 15. Michael has a party at his house and invites Jamal. The party goes late and Jamal stays over. They drink a bit of alcohol and end up kissing and masturbating each other. The next day, Jamal tells his older sister, Sadie, what happened. She is worried that Jamal is seeing an older boy and tells their mother, who is angry that Jamal has been with another boy. She goes to the police.

**Questions**:

* Is it against the law for Michael to kiss and touch Jamal?
* Was it okay for Jamal’s mum to go to the police?
* What are the consequences for Michael?
* Where can Jamal go for help?
* Where can Michael go for help?

### Activity four – The boy from the newsagent

**Case study:** Tahlia is 11. She gets a crush on an older boy, Nathan, who works at the newsagency. Nathan is 15. Tahlia doesn’t want Nathan to know how young she is because she thinks he won’t like her as much. Tahlia tells Nathan she is 13 and in Year 8. Tahlia is actually in Year 7 at the local girls’ high school. Nathan doesn’t question Tahlia’s age. He sees her in her high school uniform and trusts she is telling the truth. Nathan and Tahlia start seeing each other and start having sex.

**Questions**:

* What does the law say about Nathan and Tahlia having sex?
* What can happen if the police find out?
* Do you think it matters that Tahlia lied to Nathan about her age?
* Where can Nathan go for help?

## Activity answers

### Activity one – The relationship

**Case study:** Brett, 17, and Melissa, 13, were going out. After they broke up on bad terms, Melissa’s parents went to the police about Brett being too old for Melissa. The police charge Brett with a number of offences for sex with a child. Brett is now facing youth detention and possible listing on the Register of Sex Offenders.

**Question: What does the law say about Melissa and Brett’s relationship?**

Because Melissa is between 12 and 15 years old and there is more than 24 months’ age difference between her and Brett, Brett can be charged with sex offences with a child.

**Question: Melissa wanted to have sex at the time – does this mean it’s legally okay?**

No, it is not legally OK. The law says that the age difference between Melissa and Brett makes consent irrelevant. It does not matter whether Melissa wanted to have sex or not.

**Question: What are the consequences for Brett? Are they appropriate?**

Being placed on the Register of Sex Offenders could have future consequences for Brett regarding employment and travel. It may make it hard for him to work in any position that involves contact with young people. Because Brett is under 18, the judge has discretion (a choice) to place Brett on the register or not. In making this choice the judge will consider the impact on Brett’s life in the future.

If Brett is placed on the Register of Sex Offenders, for the next seven and a half years he would have to report to the police regularly and would not be allowed to engage in any child‑related employment.

**Question: Where can Brett go to for help?**

Brett can contact Youthlaw, (03) 9113 9500, Victoria Legal Aid, 1300 792 387, or his local community legal centre for help.

### Activity two – The theatre crush

**Case study:** Wendy is 20. She is employed by the local school to produce a theatre production with the students. Tracey has joined the class. She is 17. Wendy and Tracey start seeing each other socially. Their relationship becomes romantic and they have sex. One of the teachers finds out and decides to report Wendy to police and Child Protection in the Department of Families, Fairness and Housing.

**Question: What does the law say about Wendy and Tracey having sex?**

Wendy is in a position of care or responsibility for Tracey as she is employed by the school to work with the students. So even though Tracey is 17 and able to legally consent to sex with someone older, the law protects 16- and 17-year-olds from being taken advantage of by those in a position of care or responsibility. The law makes sex illegal in this context.

**Question: Was it okay for the teacher to go to Child Protection in the Department ofFamilies, Fairness and Housing?**

Teachers have mandatory reporting obligations to protect students from harm. This means that a teacher must tell the Department of Families, Fairness and Housing when they believe a student’s welfare is at risk.

**Question: If the police get involved, what can happen to Wendy?**

Wendy can be charged with sexual penetration of a 16 to 17-year-old. The maximum sentence for this crime is 15 years in prison. In this case, because Wendy is over the age of 18, the judge must place Wendy on the Register of Sex Offenders.

**Question: Where can Tracey go for help?**

Tracey may need counselling or support to help her cope with this situation. She can contact the Centre Against Sexual Assault, which has 24-hour counselling, on 1800 806 292.

### Activity three – Lunch-time basketball

**Case study:** Michael is 17. He meets Jamal when playing lunch-time basketball together. Jamal is about to turn 15. Michael has a party at his house and invites Jamal. The party goes late and Jamal stays over. They drink a bit of alcohol and end up kissing and masturbating each other. The next day, Jamal tells his older sister, Sadie, what happened. She is worried that Jamal is seeing an older boy and tells their mother, who is angry that Jamal has been with a boy. She goes to the police.

**Question: Is it against the law for Michael to kiss and touch Jamal?**

Yes. Michael is not allowed to kiss or perform any sexual act with Jamal as Jamal is within the 12 to 15 age group and there is more than 24 months’ age gap between them.

The law in Victoria is the same for same-sex couples as it is for couples of the opposite sex.

**Question: Was it okay for Jamal’s mum to go to the police?**

Jamal’s mother may have gone to the police out of concern for Jamal’s welfare. It might have been better for her to speak with Jamal first. Sometimes these situations can be resolved without involving the police to ensure the best outcome for both Jamal and Michael.

**Question: What are the consequences for Michael?**

Michael may be charged with sexual assault of a child under the age of 16. This is a serious offence which carries a penalty of up to 10 years in prison.

**Question: Where can Jamal go for help?**

Jamal may need counselling or support to help him cope with this situation. He can contact the Centre Against Sexual Assault, which has 24-hour counselling, on 1800 806 292.

**Question: Where can Michael go for help?**

Michael can contact Youthlaw, (03) 9113 9500, Victoria Legal Aid, 1300 792 387, or his local community legal centre for help.

### 

### Activity four – The boy from the newsagent

**Case study:** Tahlia is 11. She gets a crush on an older boy, Nathan, who works at the newsagency. Nathan is 15. Tahlia doesn’t want Nathan to know how young she is because she thinks he won’t like her as much. Tahlia tells Nathan she is 13 and in Year 8. Tahlia is actually in Year 7 at the local girls’ high school. Nathan doesn’t question Tahlia’s age. He sees her in her high school uniform and trusts she is telling the truth. Nathan and Tahlia start seeing each other and start having sex.

**Question: What does the law say about Nathan and Tahlia having sex?**

Tahlia is under the age of 12 – it is never okay in any circumstance for a person under the age of 12 to have sex, be touched sexually or for another person to perform a sexual act with or in front of them.

**Question: What can happen if the police find out?**

If the police find out about Tahlia and Nathan’s relationship, Nathan may be charged with sexual penetration of a child under 12. This is a serious offence which carries a serious penalty of up to 25 years’ imprisonment.

The police would interview him and he may have to go to court. If the judge or magistrate at court finds him guilty, he may get a jail sentence and a criminal record. And he may be put on the Register of Sex Offenders.

**Question: Do you think it matters that Tahlia lied to Nathan about her age?**

No. Believing that Tahlia was 12 or older, even if it was an honest and reasonable mistake, is not a legal defence. Nathan would still face charges.

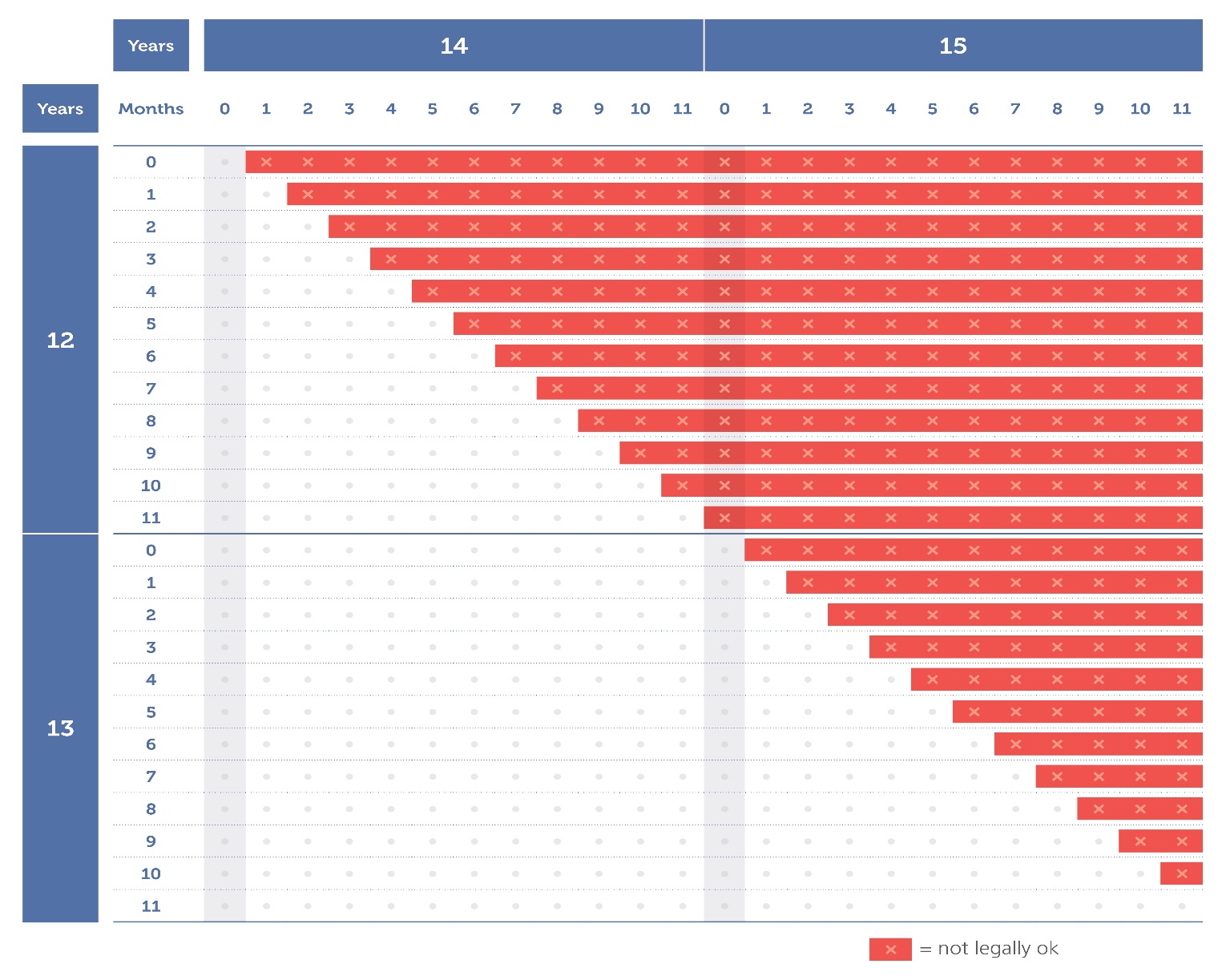
**Question: Where c****an Nathan go for help?**

Nathan can contact Youthlaw, (03) 9113 9500, Victoria Legal Aid,1300 792 387, or his local community legal centre for help.

**Header picture:
Sex young people and the law logo.**

# Age of consent: 24-month rule graph

## 12 to 15 years old

If one person’s age on the left side of the graph meets another person’s age on the right side with a cross, then they are outside the legal age of consent.

#### Header picture: Sex young people and the law logo.Age of consent: 24-month rule graph

## 14 to 17 years old

If one person’s age on the left side of the graph meets another person’s age on the right side with a cross, then they are outside the legal age of consent.

# Header picture: Sex young people and the law logo.Sexting

## Session plan

### Materials

These materials are all available at [www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit](https://www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit).

You will need:

* internet connection to play the *Sexting* video or a hard copy DVD
* Legal background notes (pages 45–48)
* copies of Activities: Sexting (pages 49–54)
* *Sexting* wallet cards (order online at [www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit](https://www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit))
* pens and paper.

### Introduction

Time allocation: five minutes

Introduce yourself

* If you are a guest presenter, briefly describe your role and where you work.
* Note on the whiteboard where students can get more information: Victoria Legal Aid, Kids Helpline, Centre Against Sexual Assault (see ‘Where to get help’ on page 67).

Lay the ground rules

* Explain that the session is going to define the law as it relates to sexual consent and that there may be things discussed that make people feel uncomfortable, or may be upsetting.
* People may choose not to participate in the session at any time. Explain where they can go to get support if needed (for example, health and wellbeing counsellor).
* Explain you are not there to judge people on their relationships or behaviour but to provide information to help them make educated choices.
* Ask that participants do not share any personal information or experiences. If they need advice about a specific situation, they should speak to a teacher or support service   
  afterwards.
* Ask if there are any questions.

Introduce the topic

* Write ‘Sexting’ on the whiteboard.
* Ask the participants to define what they think sexting is. Write their answers on the whiteboard.
* Define sexting: sending, receiving or distributing intimate images that are sexual in nature, usually via mobile phones and social networking sites.
* The law says you cannot take, send or share an intimate or sexual image or video of someone without their consent. This includes images or videos that are digitally altered. You also cannot threaten to distribute an intimate image of someone.

Provide context for the session

Show that the consequences of sexting are real by discussing one of the newspaper articles linked in the legal background notes. If you have Internet connection, click the link or hand out hard copies. Alternatively, if you are a lawyer you could speak about a case (without identifying anyone in the case).

### Video: *Sexting*

Time allocation: 10 minutes

**Video synopsis:** Kathy and Carla are friends. They are hanging out at Kathy’s place. Kathy has been sent sexy selfies from a guy in Year 10 called Mason. She shows Carla. Carla is unimpressed. Kathy tells Carla she might send Mason some sexy selfies in return. We are not told Mason’s age but we can assume he is about 16 years old, while Kathy and Carla are 14 years old. Near the end of the video, we hear Kathy’s mum coming home. Kathy wants to continue the conversation later with Carla. Kathy tells Carla she will send her Mason’s pictures.

Ask the group to consider the following questions while they watch the video:

* Is anyone breaking the law?
* What risks are involved?
* What should Kathy and Carla do?

### What does the law say?

Time allocation: 10 minutes

**Explain the law in response to the *Sexting* video.**

Is anyone breaking the law?

The characters in the video may be breaking different Victorian and national laws. Mason’s pictures are of his penis, so they would be considered sexual. Mason is in Year 10, so we can assume he is under 18. Let’s say he is 16.

Child abuse material

Some of the laws we are going to talk about relate to child abuse material, or child pornography. Let’s start by defining what child abuse material is: any film, audio, photo, publication, image, computer game, text or electronic material that shows someone under 18, or who looks under 18, in a sexual activity or posing in a sexually inappropriate way. What is sexually inappropriate depends on the context. Sexual poses with clothes on, as well as clothes off, might be classified as pornography.

In this context, Mason’s pictures could be seen as child pornography.

There are laws against inviting, producing and possessing child pornography, and also using a carriage service (phones or internet) to access, publish or send child pornography.

If you are 18 or older, you could be charged with child pornography offences if you take, send or keep a sext of anyone under 18 (if they are more than 24 months younger than you). This means 24 months exactly. Even if you’re older by just one day, you could be charged with possessing child pornography.

In Victoria there are exceptions and defences to these laws for young people under 18.

* You will not break Victorian law if you take, keep or send a sext of yourself.
* You will not break Victorian law if you take, keep or get a sext of someone else who is under 18 if:
* nobody in the sext is more than 24 months younger than you, and
* the sext does not show any crimes being committed (for example, sexual assault).
* If you do receive a sext from someone who is more than 24 months younger, you may also have a defence if you delete it straight away.

Distributing an intimate image

* In Victoria, it is illegal to send on or share a sexy picture of someone else who is under 18, even if they agree. Under the law this is called distributing an intimate image, and there are serious penalties for this.
* It is also illegal to threaten to distribute an intimate image.
* These laws also apply to pictures of adults, but they are a bit different. It is illegal to send on or share a sexy picture of someone over 18 unless they agreed to you sending or sharing it.
* Even in circumstances where someone is over 18 and consents to sharing an intimate image, there are laws in Victoria about what is allowed. For someone over 18 to consent, they must freely and voluntarily agree to the production and distribution (sharing) of the intimate image. Consent would only apply to the production or distribution of that particular intimate image, on that particular occasion, in that particular way. For example, someone might consent to a photo being taken but not to a video being recorded. Or a person might consent to their partner emailing an intimate image to another person but not to uploading it to a social media website.

In the video:

* Mason sent sexts to Kathy. Under Victorian law, Mason will not get into legal trouble because he is under 18, the images are of himself, and they don’t show any crimes being committed. Kathy is younger than Mason, so she will not get into legal trouble for keeping the images.
* Kathy says she has sent pictures to Mason as well. Under Victorian law, Kathy will not get into legal trouble because the pictures are of herself. Mason will not get into trouble for keeping the pictures as long as he is no more than two years older than Kathy.
* But Kathy will break the law if she sends Mason’s pictures to Carla because Mason is under 18. She is also breaking the law by threatening to send Mason’s pictures to Carla.

Under Commonwealth (national) laws it is still illegal to take, send or publish sexts of people under 18 although it is rare for police to charge under 18s with these types of offences.

It is important to note that the child abuse material laws of each state and territory in Australia are different.

### What happens if someone breaks the law?

In the video, if Kathy sends Mason’s pictures on to Carla, Kathy could face up to two years in prison for distributing an intimate image. She could face one year for threatening to distribute the pictures, even if she does not go through with it.

### What can Kathy and Carla do now?

* Kathy should not send Mason’s pics to Carla or anyone else.
* Kathy could ask Mason to delete her pictures and to stop sending her his pictures. There is no safe way to sext, as you can’t control who sees it once it is sent or posted.
* If Kathy sends Mason’s pics on to Carla, the best thing for Carla to do is delete them and ask Kathy to stop.

### Activity: Head-to-head *(option 1)*

Time allocation: 10 minutes

Line the students up into two rows. Ask the two students at the front of the line to answer one of the questions below. The first person to call out the correct answer (‘true’ or ‘false’) wins a point for their team. Once a student has answered a question they move to the back of the line.

Keep score of the teams’ points; the team with the most points wins.

* + 1. **You’re 15. Your 16-year-old boyfriend sent you a sexy pic. Under Victoria laws, it’s okay for you to keep it.**

**True.** You are not breaking Victorian child pornography laws because there is less than a two-year age gap between you.

* + 1. **A girl you’re seeing, who’s at uni, sent you a nude. It’s not child pornography because she’s an adult. It’s okay for you to keep it.**

**True.** If she is over 18 it is not child pornography. She gave it to you, so it’s okay for you to have it.

* + 1. **Your friend in Year 9 sent you a pic of herself in bed, naked. She said: ‘Share the love on Facebook!’ It’s okay for you to post it.**

**False.** She is under 18, so if you post her picture you will commit the offence of distributing an intimate image. It doesn’t matter if she said you could share it. You will also break national laws about sending and distributing child pornography via a carriage service.

* + 1. **An 18-year-old guy sends his dick pic to some older mates, who are all a bit older. This is legal.**

**True.** Everyone is over 18 and the picture is of himself, so it’s legal.

* + 1. **You post a photo on Instagram of you and your friends at the beach, playing cricket in your bikinis. That’s child pornography!**

**False.** Even if you’re under 18, you’re not engaged in anything sexual and it doesn’t sound like the photo shows you in a sexual pose.

* + 1. **A criminal record always goes away when you turn 18.**

**False.** Some Children’s Court records and Magistrates’ Court records last after you turn 18. It depends on what you did and how old you were. Criminal records for serious crimes, like rape, can last for life.

* + 1. **You and some friends (all under 18) had a few drinks and started taking sexy pics of each other. They’re really funny, and you all want to post them on each other’s Facebook walls. This is illegal.**

**True.** It is illegal to send on to someone else, post or share sexy pics of anyone else who is under 18, even if they agree to it.

* + 1. **You took a cute pic of your toddler cousin in the bath. It’s okay for you to save it as your phone wallpaper.**

**True.** This is not child pornography as there is no sexual activity or anything sexually inappropriate in the photo.

* + 1. **Your ex texts: ‘I’m over it, don’t wanna go out with you anymore’. You text back: ‘Take that back or you’ll be sorry! Remember those secret pics? I can easily send them to everyone.’ What you’re saying is illegal, even if you don’t go through with it.**

**True.** Under Victorian law, it’s a crime to threaten someone to distribute an intimate image of them.

* + 1. **If you’re under 18 yourself, you can’t be charged with child pornography.**

**False.** People under 18 can be charged with child abuse material (child pornography) offences.

* + 1. **You’re 17. A 14-year-old guy you know sent you a sexy pic. You’re breaking the law if you keep it on your phone.**

**True.** He’s under 18, so the pic could be seen as child pornography and it is a crime to keep it. You can’t rely on the similar age defence to child pornography because you are more than two years older than him. But if you did not ask for the picture and delete it right away, you have a legal defence (called ‘unsolicited possession’).

* + 1. **You take some sexy selfies of you in your underwear, just for you. It’s legally okay to keep them on your phone.**

**True.** You’re not breaking the law by having them.

* + 1. **And, it’s legally okay for you to send one of those selfies to someone else who’s your age.**

**True.** Although you can’t share sexy images of yourself as a child once you turn 18.

* + 1. **You and your partner took some hot pics together. They’re really sexy and you want to show them off, so you email them to your best friend. They’re your pics, it’s okay for you to share them.**

**False.** If your partner is under 18, you are breaking the law of distributing an intimate image of someone else under 18 – even if you are in the pictures too. If they are more than two years younger than you or your best friend, you will also break child abuse material laws.

*Tiebreaker question:*

* + 1. **The woman next door is always walking around her house naked. You took a great pic of her through the window – it’s arty and sexy. It’s okay for you to text it to your mates, because she’s an adult and she’s the one walking around naked all the time.**

**False.** It is illegal to distribute an intimate image of an adult unless they agreed to it. The neighbour didn’t know you took the picture, so she can’t have agreed to you sharing it. You could also be charged with other offences, such as stalking, if you have looked through the window at her repeatedly.

### Activity: Pass the sext *(option 2)*

Time allocation: 15 minutes

This activity demonstrates how Victorian intimate image and child abuse material laws work in a variety of scenarios.

Use whiteboard, textas and sext cards

* Ask three volunteers to sit up the front of the class below the whiteboard.
* Volunteers can give themselves a fictitious name (for example, a sports or movie star).
* Write their ages (see scenarios below) above their heads.
* Ask them to pass the printed sex’ card (see page 42) between each other as you describe each scenario below.
* With each scenario, discuss the sharing of images between person A and B, and then the forwarding of these images to person C.

**Scenario 1: A (15) – B (16) – C (15)**

* **A** sends nude selfie to **B**
  + Legal: image of self alone
* **B** keeps the nude of **A**
  + Legal: less than 24 months’ difference
  + Delete before **B**’s 18th birthday, or could face possession of child abuse materials
* **B** sends nude of **A** to **C**
  + Not legal: distributing an intimate image. **A** is under 18 so even with A’s consent, this breaches intimate image laws
  + But, **B** would have defence to child abuse materials offences because **B** is under 18 and there is less than 24 months’ age difference
* **C** keeps nude of **A**
  + Should delete out of respect
  + But legally, **C** may have a defence as less than 24 months’ age difference
  + If not deleted before 18th birthday, **C** could face possession of child abuse materials.

**Scenario 2: A (17) – B (21) – C (20)**

* **A** sends nude selfie to **B**
  + Legal: image of self alone
* **B** keeps the nude of **A**
  + Not legal: possession of child abuse materials. **A** is under 18 and **B** is more than 24 months older.
  + More offences if **B** also invited and/or encouraged **A**, and if **B** took the photo
* **B** sends nude of **A** to **C**
  + Not legal: distributing an intimate image. **A** is under 18 so even with **A**’s consent, this breaches intimate image laws
  + Also, distributing child abuse materials, as **B** is more than 24 months older than **A**, and over 18
* **C** keeps nude of **A**
  + Should delete out of respect
  + But also delete because it is not legal: possession of child abuse materials
  + No defence as **C** is more than 24 months older than **A**.

**Scenario 3: A (14) – B (17) – C (15)**

* **A** sends nude selfie to **B**
  + Legal: image of self alone
* **B** keeps the nude of **A**
  + Not legal: possession of child abuse materials
  + No defence as **B** is more than 24 months older than **A**
  + More offences if **B** also invited and/or encouraged **A**, and if **B** took the photo
* **B** sends nude of **A** to **C**
  + Not legal: distributing an intimate image. **A** is under 18 so even with **A**’s consent, this breaches intimate image laws
  + Also, distributing child abuse materials, as **B** is more than 24 months older than A
* **C** keeps nude of **A**
  + Delete out of respect
  + May have a defence as **C** is less than 24 months’ older than **A**
  + If not deleted before 18th birthday, **C** could face possession of child abuse materials.

**Sext card:** cut out image on the next page and (if possible) laminate



### Where to get help

Time allocation: five minutes

**Hand out the *Sexting* wallet cards.** There is blank space on the cards to add contact details of other local services. Refer to the contact details listed in ‘Where to get help’ on page 67.

**Activities**

Time allocation: 15 minutes

Select one of the *Sexting* activities on page 49–54. If you have time, run two activities.

Refer to the activity answers for activity instructions and correct answers.

### Key messages

Time allocation: five minutes

**Reiterate key messages of the session by asking the following questions.** Refer to the legal background notes for extra information and correct answers.

* **What is sexting?**

Sexting is the sending, receiving or distributing of sexual material (including images and text), usually via mobile phones or social networking sites.

* **What laws might sexting break?**

Sending, posting or sharing a sexy pic of someone who is under 18 will break the law of distributing an intimate image. Threatening to do this will also break the law.

Sending, posting or sharing a sexy pic of someone else who is over 18 will break the law of distributing an intimate image if they have not agreed to you sharing it.

There are some exceptions to child abuse material laws for young people in Victoria. You can make, keep or send a sexy pic of yourself. And you can keep a sexy pic that someone else gave you if no-one in the pic is under 18 *and* more than 24 months younger than you, and the pic does not show any crimes being committed.

* **What should you do if you get a sext, or if you are asked to make one?**

The best way to stay safe online is: don’t take, send or keep sexts of anyone under 18. Delete the sext immediately.

* **Where can you go for help?**

Centre Against Sexual Assault, Kids Helpline, Victims Support Agency, Dispute Settlement Centre of Victoria, Victoria Legal Aid, Youthlaw, a community legal centre.

## Legal background notes

### What is sexting?

Sexting is not a legal term, but a term used by the media to refer to the sending, receiving or distributing of material that is sexual in nature, usually via mobile phones but also through posts on social networking sites or blogs. A sext can include images (including drawings), audio and text.

Young people have their own terms to describe sexting, for example, selfies and nudes.

There are several laws that relate to sexting. In Victoria there are laws about distributing intimate images of someone else. There are also child abuse material laws (also known as child pornography laws) that relate to sexting.

Child abuse material laws were made to protect children from exploitation or abuse by older people. They were made before smart phones and social media became popular, so they were not specifically designed for sexting between young people.

Real-life examples: sexting cases

There have been cases of young people going to court for sexting-related offences and facing being put on the Register of Sex Offenders. Here are some examples of sexting cases:

1. Two high school students were having sex in the school toilets. A number of students began to watch and a 15-year-old boy filmed some of the act on his phone. The couple having sex knew they were being filmed. By the end of the day the boy had sent the video to some other students. The girl in the video was devastated and the police got involved. The 15-year-old boy was charged with distributing an intimate image. He pleaded guilty and was given a deferred (delayed) sentence. The magistrate made him undergo a 12-week program to assess if he was at risk of re-offending. He passed this, but the magistrate again deferred his sentence by another 12 weeks and ordered him to meet with a youth justice worker once a week. He was then placed on a 12-month good behaviour bond.

Even though the couple knew they were being filmed, because they were both under 18 it is illegal to share a video of them in an intimate act, even if the person filming is also under 18. The maximum penalty is two years in prison. And although the accused didn’t go to jail, the whole process took more than a year.

1. [‘Sexting youths placed on sex offenders register](http://www.theage.com.au/victoria/sexting-youths-placed-on-sex-offenders-register-20110723-1hugu.html)’, *The Age*, 24 July 2011:

A couple, both 17 years old, filmed themselves having sex. They broke up a year later, and the boy, who was then 18, emailed two photos from the video to some friends. Police charged him with making and transmitting child pornography. He was fined $1000 and put on the Register of Sex Offenders for eight years. He later said: ‘In a moment of rage we can do some really stupid things. Unfortunately, my mistake is going to impact for a decade or more.’

1. [‘Prosecutor pursues first sexting conviction in case involving naked 13-year-old](http://www.smh.com.au/technology/technology-news/prosecutor-pursues-first-sexting-conviction-in-case-involving-naked-13yearold-20101031-178xv.html)’, *Sydney Morning Herald*, 1 November 2010:   
   This was the first sexting case in Australia. While working a shift at KFC, Damian, from Sydney, was texting a girl. He was 18 and she was 13. He sent her a photo of himself topless, then asked her to send him one. She sent a full frontal photo of herself naked. Her dad later checked her phone, saw the photos and went to the police. Damian was charged with possession of child pornography, went to court and faced two years’ jail.

### What does the law say?

Child abuse material laws

Sexting can break both state and Commonwealth (national) child abuse material laws.

Child abuse material is defined as a film, audio, photo, publication, image, computer game, text or electronic material that describes or depicts someone who is, or appears to be, under the age of 18 engaging in sexual activity or posing in a sexually inappropriate manner. What is ‘sexually inappropriate’ depends on the context. Sexual poses with clothes on can also be classified as pornography. This is a very serious offence and carries up to 10 years’ imprisonment in Victoria and registration on the Register of Sex Offenders.

**Victorian laws**

In Victoria, a sext of someone under 18, or who looks under 18, may be classified as child pornography if the young person is shown in a sexual activity or in a sexual pose. However, there are some exceptions to child abuse material laws in Victoria for young people.

In Victoria you can take, keep and send a sexy image of yourself. And, if you are under 18 you can take or keep a sexy image of someone else who is under 18 as long as:

* no-one in the image is more than 24 months younger than you, and
* the image does not show any crimes (such as rape) being committed.

This means two years exactly. If someone is 16 years and six months old, they will break child pornography laws if they have a sexy image of someone who is 14 years and two months old.  
  
**Commonwealth laws**

It is important to know that Commonwealth (national) laws can still apply, in addition to Victorian laws, in some situations. Commonwealth child pornography laws can still apply to under 18s even if they only sext images of themselves or other children who are less than two years younger than them within Victoria. However, it is rare for police to charge under 18s for these offences because they need special permission from the Federal Government to do so.

Distributing an intimate image

In Victoria the legal definition of an intimate image includes images of:

* a person’s genital or anal area (bare or covered by underwear)
* a person’s breasts
* private activity (such sexual activity, undressing, using the bathroom)
* a person without attire of religious or cultural significance if they would normally wear this attire in public.

Images do not necessarily need to be real and image-based abuse can include images or videos that have been digitally altered. These are sometimes called ‘deepfake’ images or videos.

In Victoria, it is illegal to post, send or show a sexy picture of someone (other than you) who is under 18 to anyone else, even if they agreed to you showing their picture. This is called ‘distributing an intimate image’ and you can face serious penalties if you do this – up to two years in jail. It is also illegal to threaten to distribute an intimate image. You could face up to one year in jail.

The law is different for images of adults. If the person in the image is over 18, it is illegal to send it on or share it with anyone else if they did not agree to you sharing it.

So, adults can agree to other people distributing a sexy image of them, but children cannot.

Even in circumstances where someone is an adult and consents to sharing an intimate image, there are laws in Victoria about what is allowed. For an adult to consent, they must freely and voluntarily agree to the production and distribution (sharing) of the intimate image. Consent would only apply to the production or distribution of that particular intimate image, on that particular occasion, in that particular way. For example, someone might consent to a photo being taken but not to a video being recorded. Or a person might consent to their partner emailing an intimate image to another person but not to uploading it to a social media website.

A person does not consent to the production of an intimate image just because they consented to the production of a different intimate image (including an intimate image produced on a different occasion or in a different way).

You cannot be put on the Register of Sex Offenders for the offence of distributing an intimate image.

Producing child abuse material

It is also an offence to involve a child under the age of 16 in the production of child pornography, including inviting, offering, or encouraging the person to be involved. This is true even if the child is not being filmed (for example, they are holding the camera).

Stalking

In some situations sexting could also be considered stalking. Stalking means doing something with the intention of causing physical or mental harm to someone else, including self-harm, or causing the person to fear for their or someone else’s safety. Stalking includes repeated actions such as following someone, posting things on the internet about them, harassing phone calls, threats – and sexts.

Sexual harassment

In some situations sexting could also be considered sexual harassment. Sexual harassment is when someone makes an unwelcome sexual advance or request, or other behaviour of a sexual nature, and it is reasonable that the other person would be offended, humiliated or intimidated. This can include saying sexual things to a person, making sexual gestures to them, or subjecting them to an act of physical intimacy. The harassment has to happen in certain areas of public life, such as at work, at school or by a landlord or real estate agent.

There are national and Victorian laws protecting people from harassment. A person being harassed can complain to the Victorian Equal Opportunity and Human Rights Commission or the Australian Human Rights Commission.

Adult pornography

There are Victorian laws that relate to showing adult pornography to children. People can get in trouble for showing classified adult content in public places or for knowingly letting a child watch classified adult content in public places.

### What happens if someone breaks the law?

In a sexting case, the police could become involved because of the criminal nature of the situation. This may happen if a teacher becomes aware of the sexts or if a young person’s parents call the police. The young person themselves may call the police. Or someone may lose their phone and it may be handed in to the police with the sexts on it.

If the police become involved, they may interview the accused. If the police believe they have a strong case against the accused, they can take that person to court. At court, the magistrate, judge or jury decides whether the person is guilty of breaking the law.

If the accused is found guilty, there can be serious consequences. For a sexual offence, they could get a criminal record or a jail sentence.

### What are the penalties?

Child abuse material

Being found guilty of possessing child pornography could mean up to five years in prison. Being found guilty of producing child pornography could mean up to 10 years in prison.

Being found guilty of the Commonwealth offence of using a carriage service (phones or computer) to access or transmit child pornography could mean up to 15 years in prison.

People charged with these crimes can be put onto the Register of Sex Offenders – for people under 18, this could be for up to seven and a half years. A judge or magistrate can decide if they put someone under 18 on the register, depending on the circumstances of the case. People listed on the register must report regularly to the police and are not allowed to engage in any child-related employment.

Distributing an intimate image

If you send on, post or share an intimate picture of someone else who is under 18, or if you send on, post or share a picture of someone who is over 18 without their consent, you could face a penalty of up to two years in prison.

If you threaten to send, post or share an intimate picture of someone else, you could face a penalty of up to one year in prison.

### What can you do if you have sent or get an illegal sext?

There is no safe way to send a sext. You cannot control who sees it once it is sent or posted, and if anyone in the picture is under 18 you could get into legal trouble. The best way to stay safe is: don’t take, send or keep a sexy photo or video or text of anyone under 18. Delete it immediately.

Even if you are using apps such as Snapchat that delete images after a certain time you can’t control what happens to them. For example, someone who sees an image before it is deleted may take a screen shot of it.  
  
If you’re worried about an image that’s already out there, talk to a school counsellor or an adult you trust. They may be able to help you to resolve the problem before it gets too serious. Getting help from someone you trust could help to avoid a situation where the police get involved.

## 

## Header picture: Sex young people and the law logo.Activities: Sexting

### Activity one – What happens next?

**Case study:** Noah is 15. He was in a relationship with a girl in his class named Kaylee, who is 14. While they were going out, Kaylee let Noah take photos of her topless with his phone. They didn’t show anyone else. Kaylee thought there was nothing wrong with this because it was her body and she was in control of what she did with it. When they broke up, Noah was really upset and he sent one of the photos to his mates. Kaylee found out and told her parents, who went to the police.

**Task:** In groups of three to four, discuss the case study and what might happen next. Fill in the table below with possible impacts that the situation might have on each person: emotionally, socially (for example, at school or with friends or family) and legally. Also write where they could get help.

|  |  |  |  |
| --- | --- | --- | --- |
|  | What could happen **emotionally** and **socially?** | What could happen **legally**? | Where could they get **help**? |
| For Noah |  |  |  |
| For Kaylee |  |  |  |
| For Noah’s mates |  |  |  |

*Teacher’s note: refer to activity answers on page 51 to guide the discussion.*

### Activity two – Debate: Charge him!

Debate topic: Pham should be charged with breaking the law

**Case study:** Pham is 15. He and his friends go out to a party on the weekend. The group starts playing party tricks. Pham decides to take photos of his dick and text the photos to girls at the party. Pham’s friends all think it’s pretty funny. Stacy, who is 18, gets a text message from Pham with a photo of his ‘dick trick’. She thinks it’s gross but sort of funny, and keeps it on her phone to send to her school friends.

**Task:** In teams of three or four, discuss the case study and come up with arguments to support a side: FOR or AGAINST.

Use the questions provided below and what you have learnt about the law to come up with your arguments. There will be another group who will debate against you. Think about what they might say and how you can make your arguments more convincing.

Work out who in your team will speak first, second and third in the debate. Take notes so you remember what to say.

Each FOR team will then debate against an AGAINST team, taking it in turns to present their arguments. The teacher or presenter will keep the time and judge whose arguments are the strongest and best presented.

Some things to think about when writing your arguments:

* What does the law say about Pham taking the pics?
* What does the law say about Stacy getting the pics?
* What are the consequences for Pham and Stacy if they are charged with breaking the law?
* Who, if anyone, do you think should get into legal trouble for these pics?
* Do you think the laws about sexting are fair?
* What do you think the law should say about young people sending sexy pics to each other?
* Is sexting part of life for young people?
* Is the law up to date with what young people think and do?
* What could happen to Pham’s pics? Who else could see them?
* How might Pham and Stacy feel?
* Is anyone else affected by these pics?

*Teacher’s note: use the sample answers on page 53 to guide the discussion*. *Keep time and let each speaker know when they have reached the time limit.* *At the end of the debate, select a team from each debate with the most convincing and well-presented arguments as the winner.*

## Activity answers

### Activity one – What happens next?

**Case study:** Noah is 15. He was in a relationship with a girl in his class named Kaylee, who is 14. While they were going out, Kaylee let Noah take photos of her topless with his phone. They didn’t show anyone else. Kaylee thought there was nothing wrong with this because it was her body and she was in control of what she did with it. When they broke up, Noah was really upset and he sent one of the photos to his mates. Kaylee found out and told her parents, who went to the police.

Example answers and points of discussion

|  | What could happen **emotionally** and **socially?** | What could happen **legally**? | Where could they get **help**? |
| --- | --- | --- | --- |
| For Noah | Noah’s parents and school may get involved and he could get into a lot of trouble.  Noah might feel good about getting the pic and popular for sending it to his mates, but soon he might become very stressed and upset and feel guilty for sending  it on.  Noah may lose the trust of Kaylee, his friends, Kaylee’s friends, family, classmates, teachers and other people who find out. This may hurt Noah’s relationships and reputation with these people.  Noah might feel lonely and isolated. He might withdraw socially and from school. Noah might be bullied for what he did to Kaylee. | The police may investigate and Noah could be charged with distributing an intimate image.  If Noah is found guilty, he could face up to two years in prison. | Victoria Legal Aid, Youthlaw or a local community legal centre  Trusted adult  School counsellor  Kids Helpline |
| For Kaylee | Kaylee may be worried and upset that her privacy has been invaded.  Kaylee may be angry at Noah and Noah’s mates for breaking her trust.  Kaylee’s family, friends, classmates and teachers might find out about the photo or even see it. Kaylee might be embarrassed about this.  Kaylee might worry that Noah’s mates will send the photo on to other people, or put it online.  This all might affect her self-esteem and she might not want to go to school or do anything social.  Kaylee might be bullied or harassed by people who have seen or heard about the photo.  Kaylee might become depressed and even suicidal. | Kaylee may have to give information to police if they investigate Noah or Noah’s mates. | A trusted adult  School counsellor  Kids Helpline |
| For Noah’s mates | Noah’s mates might feel pretty happy at first to get the photo. Or they might feel a bit embarrassed about having it.  They may feel pressured to send the photo on to others.  They may feel worried about having the photo on their phones and computers.  They might be stressed from all the different opinions and advice they’re getting from friends, students, teachers and police. They may not want to go to school, or talk to anyone. | If they are any more than two years older than Kaylee, they will be breaking child abuse material laws by having the pic. If they are found guilty of this, they could be charged.  If they send the pic to anyone else, they could be charged with distributing an intimate image.  The police may want to talk to them if they investigate Noah. Their parents might get involved too. | Victoria Legal Aid, Youthlaw or a local community legal centre  Trusted adult  School counsellor  Kids Helpline |

### Activity two – Debate: Charge him!

Debate topic: Pham should be charged with breaking the law

**Case study:** Pham is 15. He and his friends go out to a party on the weekend. The group starts playing party tricks. Pham decides to take photos of his dick and text the photos to girls at the party. Pham’s friends all think it’s pretty funny. Stacy, who is 18, gets a text message from Pham with a photo of his ‘dick trick’. She thinks it’s gross but sort of funny, and keeps it on her phone to send to her school friends.

Questions for participants to think about when writing their arguments:

* **Question: What does the law say about Pham taking the pics?**

The photos are taken by Pham of himself, so under Victorian law he won’t be charged with child pornography. It is possible for him to be charged under federal laws but it is rare for police to charge under 18s for those types of offences.

* **Question: What does the law say about Stacy getting the pics?**

Stacy has the photo on her phone, she is over 18 and she is more than two years older than Pham, so she is committing the crime of possessing child abuse material.

* **Question: What are the consequences for Pham or Stacy if they are charged with breaking the law?**

The police could investigate by asking Pham and Stacy questions about the photos. The police could choose to charge Pham and Stacy for the laws they have broken. They would each then have to go to court and answer the charges in front of a magistrate. If Stacy was found guilty of possessing child pornography, the magistrate would have to put her on the Register of Sex Offenders as she is over 18. If this happens, for at least the next eight years she must tell police of any changes to her personal circumstances, including any new Internet accounts or a change in mobile phone number. She would not be able to do any child-related work.

* **Question: Who, if anyone, do you think should get into legal trouble for these pics?**

This is an opportunity for participants to discuss whether it is fair that Stacy gets into more legal trouble than Pham if she didn’t want the pics in the first place and if Pham sending them to her was offensive and disrespectful.

* **Question: Do you think the laws about sexting are fair?**

This is an opportunity to discuss the laws protecting young people.

* **Question: What do you think the law should say about young people sending sexy pics to each other?**

This is an opportunity to discuss the laws protecting young people.

* **Question: Is sexting part of life for young people?**

This is an opportunity to discuss the culture of sexting and how this fits into the context of the legal protections.

* **Question: Is the law up to date with what young people think and do?**

This is an opportunity to discuss the culture of sexting and how this fits into the context of the legal protections.

* **Question: What could happen to Pham’s pics? Who else could see them?**

Once someone else receives the photos, they are out of Pham’s control. Even though it would be an offence to do so, they could send them to anyone else or post them online for anyone to see.

* **Question: How might Pham and Stacy feel?**

Pham might feel pressured to send the pics. He might feel embarrassed that he sent them and wish that he could take them back. Similarly, once Stacy received the pictures she might feel pressured to keep them even though she thinks they are gross.

* **Question:** **Is anyone else affected by these pics?**

Anyone who receives them may be offended that they received a sexually explicit image they did not want to see. If they send them to anyone else, they will commit a crime and could get into legal trouble. If they are over 18, or more than two years older than Pham, they may unknowingly be in possession of child pornography and get into legal trouble for committing a crime. They can protect themselves by deleting the images right away.

**Header picture:
Sex young people and the law logo.**

# Cyberbullying

## Session plan

### Materials

These materials are all available at [www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit](https://www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit).

You will need:

* Legal background notes (pages 59–62)
* Copies of Activities: Cyberbullying (page 63–65)
* *Cyberbullying* wallet cards (order online at [www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit](https://www.legalaid.vic.gov.au/sex-young-people-and-law-education-kit))
* pens and paper.

School policies on bullying

If possible, familiarise yourself with the school’s policy on bullying before the session, so you can refer to the policy and engage students with it throughout the session.

### Introduction

Time allocation: five minutes

Introduce yourself

* If you are a guest presenter, briefly describe your role and where you work.
* Note on the whiteboard where students can get more information: Victoria Legal Aid, Kids Helpline, the Office of the eSafety Commissioner (see ‘Where to get help’ on page 67).

Lay the ground rules

* Acknowledge that this session may upset some people and they may choose not to participate in the session. Explain that the session is going to define the law as it relates to cyberbullying and that there may be things discussed that make people feel uncomfortable, or may be upsetting.
* People may choose not to participate in the session at any time. Explain where they can go to get support if needed (for example, health and wellbeing counsellor).
* Explain you are not there to judge people on their relationships or behaviour but to provide information to help them make educated choices.
* Ask that participants do not share any personal information or experiences. If they need advice about a specific situation, they should speak to a teacher or support service   
  afterwards.
* Ask if there are any questions.

Introduce the topic

* Ask the participants: ‘What is cyberbullying?’
* Define **bullying**: repeated physical, psychological, social or verbal attack, often by those in a position of power, with the intention of causing distress. It is when someone behaves in a way towards another person to upset them or damage their property, reputation or acceptance by others.
* Bullying may involve direct physical or verbal abuse or indirect acts that are designed to harm a person’s social reputation and/or cause humiliation and distress. Bullying can happen anywhere and anyone can be a bully, even a family member or someone you’ve had a close relationship with.
* Define **cyberbullying**: any form of bullying that uses online communications or mobile phones. It can include texts, phone calls, instant messages, blogs, chat, social media posts and comments on the websites.

Explain why this information is important

Discuss:

* one of the news articles provided in the legal background notes, and/or
* a case or example of cyberbullying that you know about and explain the legal consequences. Do not use any details that may identify people involved.

### Activity: Is this cyberbullying?

Time allocation: 10 minutes

Divide participants into groups of three or four. Ask each group to pick one of the statements below and discuss whether they think the scenario constitutes bullying, and why or why not.

* Your friend sends you an embarrassing photo of one of the girls at his school. You think it’s funny so you forward it to everyone in your address book.
* A new student at your school has a speech impediment and you anonymously create a meme about him on your school’s memes page. This starts a frenzy of posts about this student’s impediment.
* Your friend gets drunk at a party and you post a photo of her on your Facebook page without her permission. She asks you to take it down but you don’t.
* You set up a fake email address for one of the students at your school and use it to send love letters to another classmate as a joke.

Ask the groups to consider who can see what they’re sending or posting in each scenario, how this could make the person feel, and what their school’s bullying policy is.

After five minutes of discussion, ask the groups to report their answers.

### What does the law say?

Time allocation: 20 minutes

What offences relate to cyberbullying?

* **‘using a carriage service to menace, harass or cause offence’ (carriage services include phones and the internet)** – it is a crime to use carriage services in a way that a reasonable person would find menacing, harassing or offensive. Breaking this law can result in up to three years in prison.
* **making threats** – it can be an offence to threaten someone. For example, if someone sends another person messages saying, ‘I’m gonna kill you’, and the person receiving the messages has a reasonable belief that the threat would be carried out.
* **assault** – forms of bullying that involve physical violence could be assault, which is a crime. Assaults can also be non-physical, for example, putting someone in a state of fear.
* **stalking** – stalking doesn’t just mean following someone in person. It can also include repeated unwanted contact, online and via your phone.

Teachers’ and employers’ responsibilities

Teachers and employers also have legal obligations to create safe environments.

What happens if someone breaks the law?

The police may get involved. They may interview the person accused of bullying, and the accused may have to go to court. Possible penalties and consequences for the bully include:

* going to court
* going to prison
* a criminal record.

The victim or someone else (such as a parent or the police) may go to court and apply for a personal safety intervention order against the person responsible for the cyberbullying to make them stop.

The Office of the eSafety Commissioner may also get involved if they receive a complaint about serious cyberbullying of a young person who is under 18. The Commissioner may order a social media network or an individual user to delete offensive posts. They can also order the person responsible to take other action, such as to make a formal apology.

How is bullying resolved?

* Every Victorian school has a bullying policy, with different penalties.
* Dispute resolution, such as mediation, may help to resolve the problem.

What can you do?

If you are being bullied online you can:

* contact support services
* contact the police if you fear for your safety
* contact the Office of the eSafety Commissioner – if there is a post about you or a photo of you on a public site like Facebook, and it is bothering you, they may be able to help.

Think carefully before posting something online. Remember that online actions have real-life consequences.

### Where to get help

Time allocation: five minutes

**Hand out the *Cyberbullying* wallet cards.** There is blank space on the cards to add details of local services. Refer to the contact details listed in ‘Where to get help’ on page 67.

If someone is being bullied, they can:

* tell someone they trust
* contact support services such as Kids Helpline, Victims Support Agency, Centre Against Sexual Assault, the Office of the eSafety Commissioner
* contact a dispute resolution service such as Dispute Settlement Centre of Victoria
* contact Victoria Legal Aid, Youthlaw or a local community legal centre.

### Activities

Time allocation: 15 minutes

**Select one of the Cyberbullying activities on pages 63–65.** If you have time, run two activities.

Divide participants into groups of three to four. Each group should have a note-taker and a reporter.

After 10 minutes ask the groups to report their answers. Select a different group to answer each question.

### Key messages

Time allocation: five minutes

**Reiterate key messages of the session by asking the following questions**. Refer to the legal background notes for extra information and correct answers.

* **What laws can cyberbullying break?**
* using a carriage service to menace, harass or offend
* making threats
* stalking
* discrimination and sexual harassment.
* **What can you do if you are being bullied or someone you know is being bullied?**

Block the bully from further contacting you, tell an adult you trust, try dispute resolution.

* **Who else has a responsibility to stop bullying?**

Teachers, schools and employers have a responsibility to take action. Schools have bullying policies in place.

* **Where can you go for help?**

Kids Helpline, the Office of the eSafety Commissioner, Victoria Legal Aid, Youthlaw, a community legal centre, Dispute Settlement Centre of Victoria, Victims Support Agency.

## 

## Legal background notes

### What is cyberbullying?

Bullying can be defined as a repeated physical, psychological, social or verbal attack, often by those in a position of power, with the intention of causing distress. It is when someone behaves in a way towards another person or group of people to upset them or damage their property, reputation or acceptance by others.

Bullying may involve direct physical or verbal abuse or indirect acts that are designed to harm a person's social reputation and/or cause humiliation and distress. Bullying can happen anywhere and anyone can be a bully, even a family member or someone you have had a close relationship with.

Cyberbullying is any form of bullying that uses online communication or mobile phones. It can include texts, phone calls, instant messages, blogs, chat, social media posts and comments on websites. Some examples are:

* posting mean messages or pics, or excluding someone online
* making threats or sending offensive messages to someone online or through email, text or instant messaging
* tricking another person about his or her identity online
* online stalking (stalking is when a person repeatedly does something to cause physical or mental harm to someone else, including causing someone to self-harm or fear for their or someone else’s safety)
* spreading personal information, photos, or secrets online or using email, text or   
  instant messaging

If you are a victim of cyberbullying it can be hard to avoid or ignore because it can occur anytime and anywhere. Bullies can remain anonymous online and the audience can be huge.

Real-life examples

[‘Man avoids jail in first cyber bullying case](http://www.theage.com.au/victoria/man-avoids-jail-in-first-cyber-bullying-case-20100408-rv3v.html)’*:* *The Age*, 9 April 2010:  
A 21-year-old Victorian man pleaded guilty to stalking, and received a community-based order from the court, after sending threatening text messages to a former friend who ended his own life. He narrowly escaped jail in what was Australia’s first prosecution of cyberbullying. The man said he did not realise the effect of his words, and the magistrate at court warned that the case showed that SMS messages or internet communication can have severe consequences on intended victims, whether they were meant to or not.

[‘Textual offender lands probation](http://www.warwickdailynews.com.au/news/textual-offender-lands-probation-court-criminal/607911/)’: *Warwick Daily News*, 13 August 2010  
A 20-year-old Queensland man pleaded guilty in court to using a mobile phone to menace, harass or cause offence when he sent a series of abusive text messages to his ex-girlfriend and her new boyfriend. After breaking up, she refused to pay rent that she owed him. He got angry and sent more than a dozen messages threatening her and her new boyfriend. He also sent Facebook messages.

[*Brodie’s Law*](http://www.justice.vic.gov.au/home/safer+communities/crime+prevention/bullying+-+brodies+law): In 2006, 19-year-old Brodie Panlock committed suicide after serious, relentless bullying at the café where she worked. In 2011 the government introduced Brodie’s Law, which extended the definition of stalking to include behaviour that could cause a person to self-harm.

### What laws relate to cyberbullying?

Acts of cyberbullying can break many different laws. There are Victorian laws and Commonwealth (national) laws that might apply to cyberbullying.

Use of carriage services

There are Commonwealth laws about using ‘carriage services’. This is an old-fashioned way of saying landlines, mobiles, text messages and the internet. It is a crime to use carriage services in a way that a reasonable person would find menacing, harassing or offensive. Breaking this law can result in up to three years in prison.

Threats

It can also be an offence to threaten someone. For example, it is an offence if someone sends another person messages saying, “I’m gonna kill you”, and they intended to make that person fear the threat would be carried out.

The penalties for making threats will depend on what is being threatened. Making a threat to kill can carry a penalty of 10 years’ imprisonment under Victorian law. Making a threat to inflict serious injury can mean five years’ imprisonment.

If a carriage service is used to make a threat to kill, Commonwealth law might apply and it could result in 10 years’ imprisonment. If a carriage service is used to make a threat to cause serious harm to someone, it could result in seven years’ imprisonment. Whether the person receiving the threats actually feared they would be carried out is irrelevant under Commonwealth law.

Stalking

Stalking can include repeated actions such as following someone, posting things on the Internet about them, harassing phone calls, threats and sexting.

In 2011 the Victorian Government extended the stalking laws to include behaviour that involves serious bullying, known as Brodie’s law. The changes to the law mean that if a bully’s actions cause the bullied person to self-harm, then the bully can be punished with up to 10 years in prison. This law applies to bullying at work and at school.

Assault

Forms of bullying that involve physical violence could be assault, which is a crime. Assaults can also be non-physical, for example, putting someone in fear.

Discrimination

Discrimination and occupational health and safety laws also exist to create fair and safe common spaces like schools and workplaces. These laws make sure that people are not treated unfairly at work, school or certain areas of life just because they were born with, or have, certain attributes such as their sex, race, religion, sexuality, or belonging to a political party.

One example of discrimination is if a bully is threatening to ‘out’ someone at school or work who is same-sex attracted, making it unbearable for the person to be at school or work. The school or employer could get into legal trouble if they don’t step in. Schools and workplaces should have their own policies or processes for dealing with bullying.

Sexual harassment

Sexual harassment is when someone makes an unwelcome sexual advance or request, or other behaviour of a sexual nature, and it is reasonable that the other person would be offended, humiliated or intimidated. This can include saying sexual things to a person, making sexual gestures to them, or subjecting them to an act of physical intimacy.

In schools, it is against the law for a teacher or staff member to sexually harass a student. It is also against the law for a student to sexually harass another student, a teacher or a staff member at a school.

Sexual harassment is also against the law in the workplace. It is unlawful for a boss to sexually harass an employee or potential employee, or for anyone at work to sexually harass a colleague.

### Teachers’ and employers’ duty of care responsibilities

Teachers and employers have obligations under occupational health and safety laws to create safe environments free from bullying for students or employees. If a teacher or employer fails to act to stop bullying from happening, this could mean they are being negligent. The school or workplace could get into trouble. All Victorian state schools have policies for dealing with bullying.

Teachers and employers can also get into trouble for bullying behaviour.

### What happens if someone breaks the law?

How might the police get involved?

The person being bullied, or a friend or family member, may approach the police. Teachers or employers may also approach police if they feel that they are unable to provide a safe environment and that a student or employee is at risk. If you are a victim of bullying, keep messages or evidence as proof of the bullying – do not delete them.

What happens to the accused?

In serious cases of bullying amounting to stalking or assault, police may arrest and interview the person suspected of committing the crime. If the police believe they have a strong case, they can take that person to court. At court, a magistrate, judge or jury decides whether the person is guilty of breaking the law. If they are found guilty, there can be serious consequences, including a criminal record and a jail sentence.

Throughout the process of speaking to police and going to court, the accused has a right to be treated fairly by the police and a right to speak with a lawyer before being interviewed.

How might this affect that person in the future?

Getting a criminal record or a jail sentence could make it hard to get certain jobs. It may also make it hard to travel overseas in the future.

Court orders and dispute resolution

In some cases, where a victim of bullying feels very unsafe, they may apply for a personal safety intervention order. This is a court order to protect people from harm in certain serious circumstances. The order has rules (called ‘conditions’). If the bully does not follow these conditions they may be charged by police.

Before these orders are made, the court may refer you to the Dispute Settlement Centre of Victoria to try to resolve the dispute out of court.

If the bully and the victim of bullying have a family relationship the victim may apply for a family violence intervention order instead.

Complaints to the Office of the eSafety Commissioner

The Office of the eSafety Commissioner can investigate complaints about cyberbullying of young people under 18. The Commissioner can investigate and take action if the cyberbullying is likely to have a seriously threatening, intimidating, harassing or humiliating effect on a child. The Commissioner has the power to order social media networks to remove offensive content. They can also issue a notice to online bullies to make them remove posts or make an apology to the victim.

### What can you do if you are being bullied?

Tell someone. No-one deserves to be bullied and victims of bullying don’t have to deal with it alone. You can contact someone at your school, a support service or the police.

Teachers have been trained to deal with bullying. If someone is being bullied they can tell a teacher, a trusted adult or family member. Every Victorian state school has a bullying policy in place, so most incidents of bullying are resolved or dealt with by the school and usually no-one outside of the school becomes involved.

If someone is bullying online, it is best not to respond to their bad behaviour. It can also be a good idea to block the bully.

## Header picture: Sex young people and the law logo.Activities: Cyberbullying

**Task**: In groups of three to four people, discuss the case study and answer the questions. Nominate different people in the group to be chair of the discussion, speaker, timekeeper and note-taker.

### Activity one – Out

**Case study**: Jimi is 13 and in Year 7, and he’s starting to question his sexual orientation. Oscar goes through Jimi’s phone and sees that Jimi has been browsing a lot of same-sex forums on the web. Oscar starts sending Jimi texts about Jimi being a ‘fag’, and Oscar threatens to out Jimi unless Jimi gives him money each week. Most lunchtimes, Oscar and his friends surround Jimi in the schoolyard and call him names and threaten to bash him after school. Jimi is depressed, hates looking at his phone and often refuses to go to school.

**Questions**:

* What are Jimi’s rights?
* What does the law say about bullying for the school and for the person doing the bullying?
* What does the law say about discrimination?
* Where can Jimi go for help?

### Activity two – Mediation

**Case study**: Because of the bullying, Jimi’s mum goes to the police. The police advise her to apply for a personal safety intervention order. Before the court will give an intervention order, the magistrate refers the matter to mediation to see if it can be resolved outside of court.

**Questions**:

* What is the importance of getting the matter resolved? If this matter is unresolved, what impact does it have on Jimi and Oscar when they are back at school?
* If the matter is unresolved and Jimi is granted an intervention order, what impact will that have on Oscar?
* What are Jimi’s needs?
* What are Oscar’s needs?

## Activity answers

### Activity one – Out

Case study**:** Jimi is 13 and in Year 7, and he’s starting to question his sexual orientation. Oscar goes through Jimi’s phone and sees that Jimi has been browsing a lot of same-sex forums on the web. Oscar starts sending Jimi texts about Jimi being a ‘fag’, and Oscar threatens to out Jimi unless Jimi gives him money each week. Most lunchtimes Oscar and his friends surround Jimi in the schoolyard and call him names and threaten to bash him after school. Jimi is depressed, hates looking at his phone and often refuses to go to school.

* **Question: What are Jimi’s rights?**

Jimi has the right to explore his sexual orientation without fear of persecution or bullying from others. Jimi has the right to be provided with a safe learning environment.

* **Question: What does the law say about bullying for the school and for the person doing the bullying?**

The school and the teachers have an obligation to create a safe environment for students. If a school fails to act to stop bullying from happening they could get into trouble with the law.

If the bully’s behaviour is ongoing and he or she has the intention of causing physical or mental harm to the victim, or causing them to fear for their safety, the bully may be charged with stalking or assault.

* **Question: What does the law say about discrimination?**

In this situation, discrimination laws may protect Jimi. Discrimination laws are designed to ensure that people are not treated unfairly at work or school, or in certain areas of life, just because they were born with or have certain attributes such as sex, race, religion, sexuality or belonging to a political party. The school has an obligation to keep the school free from discrimination and establish a process to manage complaints of discrimination.

* **Question: Where can Jimi go for help?**

Jimi can contact Youthlaw, (03) 9113 9500, Victoria Legal Aid, 1300 792 387, or his nearest community legal centre.

He can also contact the Gay and Lesbian switchboard on (03) 9663 2939 for counselling and advice.

### Activity two – Mediation

**Case study:** Because of the bullying, Jimi’s mum goes to the police. The police advise her to apply for a personal safety intervention order. Before the court will give an intervention order, the magistrate refers the matter to mediation to see if it can be resolved outside of court.

* **Question: What is the importance of getting the matter resolved? If this matter is unresolved, what impact does it have on Jimi and Oscar when they are back at school?**

Jimi’s self-confidence may keep plummeting, which may impact on his school work and possible completion of school. He may face problems due to wagging school and have trouble with finding employment later on in life due to poor results at school. Jimi’s capacity to build relationships could be severely affected in the future.

Oscar may be constantly getting into trouble with teachers and that may deter him from pursuing his school work properly. He might get a lot of pressure from home as a result and that may further spiral into bad behaviour leading to suspension and expulsion.

* **Question: If the matter is unresolved and Jimi is granted an intervention order, what impact will that have on Oscar?**

The order will have rules (called ‘conditions’). If Oscar breaches the conditions of the order, he is breaking the law and could be charged by the police. This can affect his ability to get into certain courses and jobs.

Oscar may be banned from certain areas like parks, friends’ parties and the local shops if Jimi is also going to be in these areas.

* **Question: What are Jimi’s needs?**

Jimi wants to feel safe. Jimi wants to be left alone and not bullied. He wants friends at school who are not going to make fun of him. He wants to go to school. He may need support to help him get these things.

* **Question: What are Oscar’s needs?**

Oscar wants to save his image as the ‘tough guy’ in school. He does not want to get into trouble for what he sees as just having a bit of fun. He does not want the intervention order to be granted. Oscar may need support to help him understand the impact of his behaviour and change his behaviour.

# What do these words mean?

**accused** – a person the police think has done something illegal or who has been charged with committing an offence

**age of consent** – the legal age you can consent to sexual activity

**arrest** – when the police hold you in custody because they think you have broken the law

**charge** – the offence that the police say you have committed

**child** – person under the age of 18

**consent** – free agreement to do something

**criminal record** – a record of the crimes a person has previously been found guilty of and the punishment they received

**custody** – under arrest (not free to leave)

**evidence** – information (documents or witnesses ) used by the court to make a decision

**hearing** – the presentation of a case at a court or tribunal

**judge** – a person who hears cases in the County or Supreme Court. They can make decisions about whether you are guilty or not and what punishment you will get

**magistrate** – a person who hears cases in the Magistrates’ or Children’s Courts. They can make decisions about whether you are guilty or not and what punishment you will get

**offence** – an action the law says is wrong (illegal). See ‘charge’

**rape** – sexual penetration without permission (consent)

**Register of Sex Offenders** – a list of people found guilty of certain sex offences. People on this list are intensively monitored by the police

**sexual assault** – touching someone in a sexual way without their permission (consent)

**sexual penetration** – any body part (such as a penis, finger or tongue) or object entering a vagina, anus or mouth. It includes penetration to any extent

**victim** – a person who a crime is committed against

# Where to get help

### Counselling and support

**Sexual Assault Services Victoria (CASA)**  
You can contact a Centre Against Sexual Assault 24 hours a day, seven days a week for crisis counselling, support, information and advocacy. Your call will be directed to the CASA in your region.

**Tel:** 1800 806 292   
**Website:** [www.sasvic.org.au](http://www.sasvic.org.au)

**Kids Helpline**  
Free, private and confidential telephone and online counselling service specifically for young people aged between five and 25.

**Tel:** 1800 551 800  
**Website:** [www.kidshelpline.com.au](https://kidshelpline.com.au/)

**Victims Support Agency**  
Information about how a victim can be supported throughout the police and court stages, and also about compensation.

**Tel:** 1800 819 817  
**Website:** [www.victimsofcrime.vic.gov.au](https://www.victimsofcrime.vic.gov.au/)

**Dispute Settlement Centre of Victoria**  
Free mediation and dispute resolution. Mediation is a way of resolving disputes without going to court. The mediator is a trained, impartial third person who helps the parties talk about the issues and come to an agreement that works for both parties.

**Tel:** 1800 658 528  
**Website:** [www.disputes.vic.gov.au](https://www.disputes.vic.gov.au/)

### Legal information and advice

**Victoria Legal Aid**

For free information about the law and how we can help you:

* visit our website [www.legalaid.vic.gov.au](https://www.legalaid.vic.gov.au/)
* use our Legal Help Chat on the website, Monday to Friday, 8 am to 6 pm, excluding public holidays
* phone Legal Help on 1300 792 387 Monday to Friday, 8 am to 6 pm, excluding public holidays.

**Youthlaw**  
Free legal service for people under 25.

**Tel:** (03) 9113 9500  
**Website:** [www.youthlaw.asn.au](https://youthlaw.asn.au/)

**Local community legal centre**   
Community legal centres give free legal advice. Call the Federation of Community Legal Centres or visit their website to find your nearest community legal centre.

**Tel:** (03) 9652 1500  
**Website:** www.fclc.org.au

**Youth Law Australia (formerly Lawstuff)**  
Legal information and email advice service for children and young people.

**Website:** [www.yla.org.au](https://yla.org.au/)

## Extra resources

### Legal resources

**Victoria Legal Aid**

These publications are free. You can order up to 50 copies at a time from the Victoria Legal Aid website.

***Am I old enough?***  
Booklet for young people about what the law will or will not let them do.  
Order free copies at: [www.legalaid.vic.gov.au/am-i-old-enough-common-legal-issues-young-people](https://www.legalaid.vic.gov.au/am-i-old-enough-common-legal-issues-young-people)

**Legal help card**  
A wallet-sized brochure about Victoria Legal Aid services in 36 languages.  
Order free copies at: [www.legalaid.vic.gov.au/victoria-legal-aid-help-card-english](https://www.legalaid.vic.gov.au/victoria-legal-aid-help-card-english)

Visit Victoria Legal Aid’s website [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au) for more information about:

* sex and the law
* sexting and child abuse material
* going to court for a criminal offence
* police powers
* bullying online or at school
* discrimination and harassment.

**Victoria law handbook**

A practical guide to the law in Victoria by the Fitzroy Legal Service, available online at: [www.lawhandbook.org.au](https://fls.org.au/law-handbook/)

**Youthlaw**

Youthlaw has online fact sheets on a variety of topics: [www.youthlaw.asn.au/learn-about-the-law/](https://youthlaw.asn.au/learn-about-the-law/)

**Non-legal resources**

**Relationships – Love, the good, the bad, the** **ugly**

A free booklet from Safe+Equal (formerly the Domestic Violence Resource Centre Victoria) that helps identify whether you are in an unhealthy relationship and where to get help: <https://store.safeandequal.org.au/products/love-good-bad-ugly>

**Our Watch**  
An independent organisation providing resources and information to raise awareness of and prevent violence against women and their children: [www.ourwatch.org.au/](https://www.ourwatch.org.au/)

**The Line**

A website for teens, parents and teachers with information and resources on respectful relationships, gender, sex and bystander action: [www.theline.org.au](https://www.theline.org.au/)

**Office of the eSafety Commissioner**An online reporting tool for image-based abuse with reporting options, links to further support and assistance to remove abusive materials: [www.esafety.gov.au/image-based-abuse](https://www.esafety.gov.au/image-based-abuse/)