



## Fact Sheet: What is sexual assault?

CASA Forum defines sexual assault as any behaviour of a sexual nature that makes someone feel uncomfortable, frightened, intimidated or threatened. It is sexual behaviour that someone has not agreed to, where another person uses physical or emotional force against them. It can include anything from sexual harassment through to life threatening rape. Some of these acts are serious indictable crimes. Sexual assault is an abuse of power. Sexual assault is never the fault or responsibility of the victim/survivor.

Examples of sexual assault include:

- **Stalking** e.g. repeatedly being followed or watched by someone;
- **Rape** e.g. being forced to have vaginal, anal or oral sex'
- **Unwanted touching** e.g. pinching, patting, embracing, rubbing, groping, flicking, kissing, fondling, being touched on the breasts, bum, legs etc;
- **Sexual harassment** e.g. dirty jokes or rude comments about a person's sex life;
- **Obscene gestures** e.g. simulating masturbation in front of a person;
- **Voyeurism** e.g. being watched doing intimate things without permission;
- **Unwanted sexual comments or jokes** e.g. comments about a person's body or relationships;
- **Sex-related insults** e.g. calling someone a slut, dyke, homo, slag etc;
- **Pressuring for dates or demand for sex** e.g. invitations that turn into threats or not taking 'no' for an answer;
- **Indecent exposure** e.g. someone showing private parts of their body or 'flashing' their genitals;
- **Being forced to watch or participate in porn** e.g. taking a photo without permission, forcing someone to be on video, making someone watch a pornographic movie;
- **Offensive written material** e.g. dirty notes, letters, phone messages, emails, SMS, pictures;
- **Incest/intrafamilial child sexual assault** e.g. a family member e.g. father or brother engaging in sexual activity with a child or young person;
- **Unwanted, offensive and invasive interpersonal communication** through technologies such as mobile phones, internet social networking sites and email.

## What you need to know about consent

Consent - or the lack of it - is an important part of legal and social definitions of sexual assault.

The legal definition of **CONSENT** is 'free agreement'.

A person must have the **capacity** to give free agreement.

Capacity is based on the person:

- **Being the right age:** They must be old enough to make sexual decisions.
- **Being sober:** If someone is drunk, stoned or 'out of it', their ability to make decisions is impaired. So they're not able to give consent.
- **Having the mental and physical ability to freely agree:** A person has to have the mental ability to make decisions and the physical ability to communicate their desires.

The law says there are circumstances where a person is **not able to form free agreement**. These include instances when someone is:

- Threatened or afraid of harm to themselves or someone else;
- Detained against their will;
- Asleep, unconscious, affected by drugs or alcohol;
- Unable to understand the sexual nature of the act;
- Unclear about the identity of the person performing the act;
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Mistaken in believing the act is for medical or hygienic purposes.

## What other reasons are there for people agreeing to have sex if they don't really want to?

There are a range of other factors that can impact on the ability of a person to refuse sexual activity.

Many of these are not recognised by the law.

This does not mean that they are not equally powerful in limiting a person's ability to give free agreement.

These factors might include:

- Economic coercion or threat of losing a job;
- Gendered expectations about relationships such as men's entitlement to sex and women's obligation to give it;
- Fear of losing a relationship;
- Other pressures and threats that can make truly free agreement difficult.

## Age of Consent

The law says if you are:

- **Under 12** - no one can have sex with you or touch you sexually or perform a sexual act in front of you.
- **12 to 15** - only a person who is within TWO calendar years of your age can have sex with you or touch you sexually. Even if you both want to do it, their age is the most important thing.
- **16 or 17** - no one who is caring for you or supervising you, (like a teacher, youth worker, doctor, sports coach, foster carer) can have sex with you or touch you sexually, even if you agree.

## References

Victoria Legal Aid (2008), *Am I Old Enough*, Melbourne: Victoria Legal Aid.

CASA Forum (2008), *Standards of Practice 2nd Edition*, Victorian Centres Against Sexual Assault

Department of Human Services (2006) *Child Sexual Abuse. Understanding and Responding: for professionals working with children who have experienced sexual abuse*