



# Legal issues bulletin

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## The law relating to the age of consent and related sexual offences

The Crimes Act 1900 has a number of important provisions dealing with sexual offences and the age of consent for sexual intercourse.

### What are the main general features of the provisions?

The major general features can be summarised as follows:

- The age of consent is 16 years for all persons. The old differentiation between unlawful homosexual and heterosexual acts and age of consent within the criminal law has been abolished.
- The provisions of the criminal law in relation to sexual offences committed by males or females apply equally.
- In relation to certain specifically defined relationships, the age of consent is 18 years for both males and females.

### What are the main offences created by the legislation?

While there are a variety of sexual offence provisions within the legislation, those with specific importance for departmental staff are -

- having sexual intercourse with a child between the ages of 10 and 14 years - maximum penalty 16 years imprisonment or 20 years in circumstances of aggravation.
- having sexual intercourse with a child between the ages of 14 and 16 years - maximum penalty 10 years imprisonment or 12 years in circumstances of aggravation.
- having sexual intercourse with a person who is of or above the age of 16 and under the age of 17 years and who is under the special care of the offender - maximum penalty 8 years imprisonment.
- having sexual intercourse with a person who is of or above the age of 17 and under the age of 18 years and who is under the special care of the offender - maximum penalty 4 years imprisonment.

### What is meant by the term "circumstances of aggravation"?

For the purposes of the above offences, "circumstances of aggravation" includes where -

- immediately before, at the time of or after the commission of the offence, the offender maliciously inflicts actual bodily harm on the victim or any other person who is present or nearby.
- immediately before, at the time of or after the commission of the offence, the offender threatens to inflict bodily harm on the victim or any other person who is present or nearby by means of an offensive weapon or instrument.
- the offender is in the company of another person or persons.
- The alleged victim is under the age of 16 years.
- the victim is, either generally or at the time of the offence, under the authority of the offender.

- the victim has a serious physical disability or cognitive impairment.

### What is meant by the term “special care”?

The legislation defines the relationship of "special care" as including circumstances where the offender -

- is the step-parent, guardian or foster parent of the victim.
- is a school teacher and the victim is a pupil of the offender.
- has an established personal relationship with the victim in connection with the provision of religious, sporting, musical or other instruction to the victim.
- is a health professional and the victim is a patient of the health professional.

It is a defence to a prosecution under the "special care" offences if at the time of the offence, the offender and victim were married to each other.

### What is the practical effect of the provisions for departmental staff?

Staff should note the various provisions relating to school teachers. While the "special care" provisions specifically refer to school teachers, both school staff will generally be in a position of authority over students aged 10 to 16 and thus subject to the aggravated offence provisions.

School counsellors are most likely to be included in the definition of health professional and thus are also captured by the new provisions.

Staff should also note these changes apply only to the criminal law and do not affect or alter their obligations to comply with relevant departmental policies in respect of child protection. In particular, school staff should be aware that sexual intercourse with any student, irrespective of age, will be regarded as misconduct or improper conduct and may result in disciplinary action being commenced by the department. Staff should refer to the department's [Responding to Allegations against Employees in the Area of Child Protection](#) (June 2010) policy for further information.

School counsellors should also note that the changes do not affect or alter any obligations they may have to comply with any code of ethics or conduct that may be approved from time to time by the Psychologists Registration Board.

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