

Gay & Lesbian Rights Lobby

Age of consent

In NSW, the law does not treat everybody the same

The age of consent for gay men in NSW is 18 while heterosexuals and lesbians are able to consent to sex at 16. There are a number of other differences in how the law deals with sex between men. This is a leftover from when sex between men was illegal.

NSW has the most draconian laws of any Australian State or Territory on this issue.

The law is different for gay men

- The age of consent of 18 is two years higher than the age for all other people.
- It is not tied to when a person is capable of consenting. By setting the general age of consent at 16, the law already recognises that men and women can consent to sex at 16.
- A gay man can be convicted even if he genuinely thought his partner was over 18 and this was a reasonable mistake. Reasonable mistake is a defence for other people.
- The penalties are harsher than for other people, even if the younger man is over 16 (the age of consent for all other types of sex).

These discriminatory provisions are unnecessary

There are 2 complete sets of provisions in the criminal law in NSW dealing with the sexual activity of young people. The first set is gender neutral and criminalises sexual activity with young people under 16. They apply to sexual activity with both boys and girls and protect each equally. The second apply only to sexual activity between males.

Current laws criminalise the sexual activities of 16 and 17 year old gay men. They do not protect them.

Why support an equal age of consent?

- It ensures the law treats everyone equally.
- Young men do not get vital health information because their conduct is illegal. Young men need advice about safe sex to prevent the spread of HIV/AIDS and other health problems.
- These discriminatory laws affect young men's self-esteem, increasing the risk of depression and suicide.
- The current laws about sex between men are not about protecting children. In fact a minor who has sex with an adult may be subject to harsh criminal penalties. Children are protected by gender neutral laws that protect both boys and girls. We support the protection of children and the gender neutral laws that already do that.
- The Model Criminal Code Officers Committee of the Standing Committee of Attorneys General, which paid particular attention to offences against children, recommended a uniform age of consent.

FACTSHEET

frequently asked questions

I don't want my son to have sex, don't the laws stop him?

Many young men are sexually active before they turn 18; many also choose not to be. Equalising the age of consent will not increase the number of teenagers having sex but it will make sure teenagers are not unnecessarily made into criminals. At the moment young men can go to jail for having sex with other young men.

but don't older men prey on young boys?

Both boys and girls can be subject to abuse. It's important that laws protect them and the gender neutral laws relating to sex with minors already do that.

are the laws the same everywhere?

No, most States have an equal age of consent. Many have had an equal age of consent for many years without this causing anyone any concern. Equalising the age of consent will bring New South Wales' laws into line with the majority of Australian States

how severe are the penalties for young men?

They can be harsh. If it has happened on 3 separate occasions, he is liable to up to 25 years in prison. If an 18 year old has sex with a 17 year old he is liable to a much greater penalty than if he assaulted him. And the younger man can also be charged.

are there other effects?

These unequal laws encourage discrimination and stigmatise young gay men. This undermines anti-discrimination laws. They also legitimise violence against gay men and lesbians.

will this make it easier for young people to get health advice?

Yes. Sometimes young men avoid health care because they are worried that what they are doing is against the law. Education programmes that promote safe sex and prevent HIV/AIDS can not target young gay men because this could be seen as promoting criminal activity. The age of consent also makes it difficult for young gay men to access support and counselling services. Young gay men are at higher risk of suicide so this is of particular concern. Additionally, the risk is increased by the negative impact on self-esteem of this inequality and the discriminatory attitudes that it supports. Health professionals generally oppose an unequal age of consent.

what does the general community think?

There is broad community support for equality before the law and an equal age of consent. After 3 years of community consultation, Justice Woods recommended an equal age of consent would better reflect community standards. Other supporters of an equal age of consent include the National Youth Roundtable, the NSW Anti-Discrimination Board, Law Society, Family Planning Association, Parents and Friends of Lesbians and Gays, and the Parents and Citizens Association.

RESEARCH BY UNSW ON THE IMPACT OF THE UNEQUAL AGE OF CONSENT ON YOUNG MEN IS AVAILABLE AT WWW.GLRL.ORG.AU

The Lobby fights discrimination against lesbians and gay men. If you would like to help or make a donation to our work, please contact us.

You don't have to be experienced to get involved. You just have to want to make a difference.

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