

Sexual Intercourse with Young Persons and Mandatory Reporting

Sexual Intercourse with a Young Person

It is a crime to have sexual intercourse with a person who is under the age of 17.

However, it is a defence if:

- The accused person believed on reasonable grounds that the other person was of or above 17; or
- There was consent; and
 - That person was at least 15 and the accused was no more than 5 years older;
 - That person was at least 12 and the accused was no more than 3 years older (s124 of the Criminal Code)

“Sexual intercourse” means the penetration to the least degree of the vagina, genitalia, anus, or mouth by the penis and includes the continuation of sexual intercourse after such penetration.

Mandatory Reporting

You are a mandatory reporter if you are a “prescribed person” under the Children, Young Persons and Their Families Act. Prescribed people include medical practitioners, registered nurses, psychologists, police officers, teachers, child carers, social workers and counsellors. You should check s14(1) of the Act if you are not sure if you are a mandatory reporter.

The purpose of the Act is to provide for the care and protection of children in a manner that maximises a child’s opportunity to grow up in a safe and stable environment so that they are able to reach their full potential.

A child is at risk where they have been, are being, or are likely to be, abused or neglected. Further if the child lives with anyone or has frequent contact with someone who has threatened to kill, abuse or neglect the child then the child is at risk.

A child is also considered to be at risk if they are an “affected child” within the meaning of the Family Violence Act. An “affected child” is a child whose safety, psychological wellbeing or interests are affected or are likely to be affected by family violence.

If you are a mandatory reporter, in the course of carrying out your work, you must inform Gateway Services or Child Protection if you believe, or suspect, on reasonable grounds, or know:

- that the child is, or there is a reasonable likelihood of a child being killed, abused or neglected by a person with whom the child lives; or
- that while a woman is pregnant, there is a reasonable likelihood that after the birth of the child that:

- the child will suffer abuse or neglect, or may be killed by a person with whom the child is likely to live; or
- the child will require medical treatment or other intervention as a result of the behaviour of the woman, or another person with whom the woman resides or is likely to reside, before the birth of the child.

The notification must be made as soon as practicable after you form the belief or suspicion or gain the knowledge. Abuse includes sexual abuse.

A report can be verbal or in writing, and must include a statement of the observations, information, opinions and other grounds upon which the belief, suspicion or knowledge is based. You may be asked to provide a written report by the Secretary.

If a report is not made, there is a maximum penalty of \$2600, and there may also be professional implications.

The identity of anyone making a report is confidential. You have discharged your duty if you report to either Gateway Services or Child Protection.

If you have made a notification under s14 of the Act, you cannot be held to have breached any code of professional etiquette or ethics, or to have departed from an accepted standard of professional conduct. You will also incur no civil or criminal liability to the extent that you have acted in good faith.

Contacts:

Women's Legal Service: (03) 6231 9466

Gateway Services: 1800 171 233

Child Protection: 1300 737 639

"Sexual Intercourse with Young Persons and Mandatory Reporting" is intended to give general information to service providers. Whilst we have made every effort to ensure the contents of this publication are accurate at the time of publication the law and services do change. Legal and service exactness is not possible in a publication of this nature. This publication should not be used as a substitute for legal advice.

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