

Understanding affirmative consent



It's important that kids in out-of-home care understand the legislation around consent, and what this means in practice. Affirmative consent laws are now effective in NSW, meaning that sexual consent must be clearly stated – it cannot be presumed.

Many kids in out-of-home care lack positive role models to guide their decisions and behaviours. That's why it is vital to support their understanding of affirmative consent from three key perspectives:

Seeking consent

- a person must take steps to obtain clearly expressed consent from their partner before and during all sexual activity
- it's equally important for each person involved to gain consent
- seeking consent should not happen once at the start of a sexual encounter - it involves continued communication and agreement between partners
- to gain consent, a person should ask clear questions like 'do you want to...?', 'can I...?' and 'is this okay?'. They should also ask partners how they would like to be touched, or what they would like to do
- before proceeding, a person should double check verbal consent through observing body language and facial expressions – non-verbal cues can be misunderstood, so should not be used in place of verbal consent
- if a person is so affected by alcohol or drugs that they can't choose or refuse to participate, they cannot give consent. If this occurs, any sexual activity should cease immediately
- seeking consent can feel uncomfortable and may involve a fear of rejection. This is normal, but it's better to practice asking consent than to avoid it
- a person must never apply pressure, bribery, or manipulation to gain consent. If the response is 'no', it must be respected so both parties feel safe and comfortable
- when considering consent, a person should understand that sexual activity is done 'with' and not 'to' someone else.

Giving consent

- it's important to give clear verbal consent
- consent must be voluntary and enthusiastic – consent provided under pressure, threats or coercion consent is not valid
- consent is required at every stage of a sexual interaction

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- consent may be conditional – for example, it may require the use of particular contraceptive measures, or exclude certain acts
- consent can be withdrawn at any time.

Denying or withdrawing consent

- a person can deny or withdraw consent at any point during a sexual encounter
- denying consent can feel uncomfortable - some kids may undertake unwanted sexual activity rather than saying 'no'
 - support kids to practice saying 'no' and feel comfortable denying requests
 - discuss ways to say 'no', such as 'I don't want to go any further', 'not now', and 'I'm not ready'
 - partners should never apply pressure or negative consequences for saying 'no'
- feelings can change after sexual activity starts – it's important for a person to monitor their feelings and responses after initial consent is given, and withdraw consent if needed
- it's also important to monitor a partner's response after consent is given – if they are silent, crying, appear upset or frozen, this is an indication that they may no longer be consenting. Sexual activity should cease at this point, and consent should be renegotiated.

It's important to have discussions with kids around consent to ensure they develop and maintain healthy, respectful relationships. Conversations about consent support kids to understand interpersonal boundaries, and reduce the likelihood that they will display problematic and harmful sexual behaviours.