

Prevention of sexual exploitation of people with cognitive impairment

From 30 March 2015 there are new laws to better protect people with a cognitive impairment from sexual exploitation by service providers.

These laws cover any person who provides a service to someone with cognitive impairment, whether paid or not. This might include home care assistants, support workers, cleaners or nurses but also extends to others like hairdressers, bus drivers or social activity volunteers.

Spouses or domestic partners of the person with cognitive impairment are not covered by the new laws.

The laws

Under the laws, a service provider is guilty of an offence if he or she:

1. uses undue influence to obtain or procure sexual intercourse or indecent contact with a person with a cognitive impairment.
2. behaves in an indecent manner in the presence of a person with a cognitive impairment without consent or obtaining that consent by undue influence.

A cognitive impairment is defined as:

- an intellectual disability;
- a developmental disorder (including autistic spectrum disorders);
- a neurological disorder;
- dementia;
- mental impairment;
- a brain injury.

Undue influence is defined as including the abuse of a position of trust, power or authority. It is about someone improperly taking advantage of another person to get him or her to agree to something.

A service provider who is in a position of power, trust or authority will be presumed to have obtained the consent (of the victim) by undue influence unless she or he proves to the contrary. This means that the onus is placed upon the service provider to show that the person with a cognitive impairment gave consent to the sexual behavior and that the consent was not obtained through undue influence.

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Other laws that may apply

Sexual activity is against the law if someone involved is not willing or is unable to provide legal consent. In these instances laws about rape, compelled sexual manipulation, indecent assault and family violence may apply.

Workers should be aware

Organisations that provide services to people with a cognitive impairment should also have workplace policies that prohibit sexual contact with clients.

Further information or assistance

The Legal Services Commission runs a free Legal Help Line for the community.

The Legal Help Line is open 9AM – 4.30PM, Monday – Friday to provide legal information and advice. Telephone 1300 366 424 (*a local call cost).

If you are deaf, or have a hearing or speech impairment you can contact the Legal Services Commission through the [National Relay Service](#).

- TTY users phone 133 677 then ask for 1300 366 424
- Speak and Listen users phone 1300 555 727 then ask for 1300 366 424
- Internet relay users connect to the [NRS](#) and then ask for 1300 366 424

'Law 4 All': the Legal Services Commission runs community legal education programs for people living with a disability.

Telephone (08) 8111 5555 or cle@lsc.sa.gov.au for further information.

Individual organisations should obtain their own independent legal advice about the operation of these laws and their obligations with respect to workplace policies and procedures to ensure employee compliance.

The Attorney-General's Department of South Australia website contains further information about the *Disability Justice Plan 2014 – 2017* and measures to make the criminal justice system more accessible and responsive to the needs of people with a disability.