



New South Wales

National Disability Insurance Scheme (Worker Checks) Regulation 2020

under the

National Disability Insurance Scheme (Worker Checks) Act 2018

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *National Disability Insurance Scheme (Worker Checks) Act 2018*.

GARETH WARD, MP
Minister for Families, Communities and Disability Services

Explanatory note

The object of this Regulation is to provide for the following matters for the purposes of the *National Disability Insurance Scheme (Worker Checks) Act 2018* (the *Act*)—

- (a) the offences that result in a person being a disqualified person or presumptively disqualified person under the Act,
- (b) the fees payable for an application for clearance under the Act and for an internal review of a decision under the *Administrative Decisions Review Act 1997*,
- (c) the laws of New South Wales and other States and Territories relating to the protection of children and vulnerable persons that are prescribed for the purposes of information gathering and sharing under the Act and the laws of other States and Territories that are corresponding laws for the purposes of the Act,
- (d) the offences under the Act for which penalty notices may be issued and the amounts of the penalties payable,
- (e) the authorised persons to whom functions of the Screening Agency may be delegated.

This Regulation is made under the *National Disability Insurance Scheme (Worker Checks) Act 2018*, including sections 5, 6(2)(d), 23(e), 45, 57(2) and (4), 60(1) (the general regulation-making power) and clauses 1 (definition of *corresponding law*) and 7(5) of Schedule 1.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory, and matters that are of a machinery nature.

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1 Name of Regulation

This Regulation is the *National Disability Insurance Scheme (Worker Checks) Regulation 2020*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

3 Definitions

(1) In this Regulation—

offender includes an alleged offender.

relative has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

the Act means the *National Disability Insurance Scheme (Worker Checks) Act 2018*.

victim of an offence includes a person to whom an element of the offence is related.

vulnerable person means an adult who is, or may be, unable to take care of themselves or protect themselves from harm or exploitation due to age, illness or disability, and includes an adult who, by reason of age, illness or disability, has difficulty—

- (a) understanding their rights, or
- (b) understanding a power imbalance between themselves and other persons, or
- (c) understanding that a person's behaviour, intended or otherwise, is inappropriate or illegal, or
- (d) making a decision, or
- (e) providing consent or agreement, or
- (f) expressing disapproval or objection, or
- (g) communicating, or
- (h) preventing, defending or protecting themselves against an offence or a person who commits an offence.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Disqualifying offences

The following are prescribed as disqualifying offences for the purposes of the Act—

- (a) an offence specified in Part 1 of Schedule 1,

- (b) an offence specified in Part 2 of Schedule 1 if the victim of the offence was a child or vulnerable person,
- (c) an offence specified in Part 3 of Schedule 1 if—
 - (i) the victim of the offence was a child or vulnerable person, and
 - (ii) at the time of the offence, the offender was not a relative of the child or vulnerable person,
- (d) an offence specified in Part 4 of Schedule 1 if the victim of the offence was—
 - (i) a child aged 14 years or more where the offender is at least 5 years older than the child, or
 - (ii) a child aged under 14 years, or
 - (iii) a vulnerable person,
- (e) the common law offences of rape and attempted rape if the victim of the offence was a child or vulnerable person,
- (f) an offence under a law of another State or Territory or the Commonwealth that consists of conduct that, if it occurred in New South Wales, would constitute a disqualifying offence under this clause.

5 Presumptively disqualifying offences

The following are prescribed as presumptively disqualifying offences for the purposes of the Act—

- (a) an offence specified in Part 2, 3 or 4 of Schedule 1 if it is not a disqualifying offence under clause 4(b), (c) or (d),
- (b) the common law offences of rape and attempted rape if they are not disqualifying offences under clause 4(e),
- (c) an offence specified in Part 1 of Schedule 2,
- (d) an offence specified in Part 2 of Schedule 2 if the victim of the offence was a child or vulnerable person,
- (e) an offence specified in Part 3 of Schedule 2 if—
 - (i) the victim of the offence was a child or vulnerable person, and
 - (ii) at the time of the offence, the offender provided supports or services to the child or vulnerable person because of the vulnerability of the child or vulnerable person, and
 - (iii) at the time of the offence, the offender was not a relative of the child or vulnerable person,
- (f) an offence under a law of another State or Territory or the Commonwealth that consists of conduct that, if it occurred in New South Wales, would constitute a presumptively disqualifying offence under this clause.

6 Historic offences

An offence that is prescribed as a disqualifying offence under clause 4 or a presumptively disqualifying offence under clause 5 is a disqualifying offence or presumptively disqualifying offence (as the case requires) even if—

- (a) the offence was committed before the commencement of this Regulation, or
- (b) the offence is repealed.

7 Fee for application for clearance

For the purposes of section 6(2)(d) of the Act, the fee is—

- (a) in the case of an applicant engaged as a volunteer—nil, or

- (b) in any other case—\$80.

8 Fee for internal review

For the purposes of section 45 of the Act, the fee is \$20.

9 Relevant laws for protection of children or vulnerable persons

For the purposes of section 23(e) of the Act, the following laws are prescribed—

- (a) *Ageing and Disability Commissioner Act 2019*,
- (b) *Care and Protection of Children Act 2007* of the Northern Territory,
- (c) *Child Safety (Prohibited Persons) Act 2016* of South Australia,
- (d) *Children and Young Persons (Care and Protection) Act 1998*,
- (e) *Children’s Guardian Act 2019*,
- (f) *Disability Services Act 2006* of Queensland,
- (g) *Ombudsman Act 1974*,
- (h) *Working with Children Act 2005* of Victoria,
- (i) *Working with Children (Criminal Record Checking) Act 2004* of Western Australia,
- (j) *Working with Children (Risk Management and Screening) Act 2000* of Queensland.

10 Corresponding laws

For the purposes of the definition of *corresponding law* in clause 1 of Schedule 1 to the Act, the following laws are prescribed—

- (a) *Disability Inclusion Act 2018* of South Australia,
- (b) *National Disability Insurance Scheme (Worker Clearance) Act 2020* of the Northern Territory,
- (c) *Registration to Work with Vulnerable People Act 2013* of Tasmania,
- (d) *Working with Vulnerable People (Background Checking) Act 2011* of the Australian Capital Territory.

11 Authorised persons

For the purposes of the definition of *authorised person* in clause 7(5) of Schedule 1 to the Act, the Chief Executive Officer of Service NSW and members of staff of Service NSW are prescribed as authorised persons.

Schedule 1 Disqualifying offences

Note. * indicates a repealed provision

Part 1 General

| Item | Type of offence | Act/Criminal Code | Offences |
|------|--|--|--|
| 1 | Murder and related offences | <i>Crimes Act 1900</i> | ss 18(1)(a), 26, 27, 28, 29, 30 and 204(a) s 32A*, if the offence involves the intent to cause the death of a person ss 93IF* and 93O, if the offence involves intent to cause death s 110, if the person assaults with intent to murder any person s 349, if the offence relates to murder |
| | | <i>Crimes Act 1914</i> of the Commonwealth | s 24(1)(a)*, if the offence involves killing a person s 24(1)(b)* |
| | | <i>Crimes (Internationally Protected Persons) Act 1976</i> of the Commonwealth | s 8(1), if a person murders an internationally protected person s 8(2)(a) |
| | | <i>Criminal Code</i> of the Commonwealth | ss 71.2, 115.1, 268.8, 268.9, 268.24, 268.38(1), 268.40(1), 268.48(1), 268.49(1), 268.50, 268.70, 268.71(1), 268.76(2), 268.90(1), 268.91, 268.92(1), 268.93(1) and 268.97 s 104.1*, as in force before 14 December 2005 s 268.65, if the conduct results in death s 268.98, if the attack results in death |
| 2 | Genocide | <i>Criminal Code</i> of the Commonwealth | ss 268.3, 268.4, 268.5, 268.6 and 268.7 |
| 3 | Acts intended to cause injury or death | <i>Criminal Code</i> of the Commonwealth | ss 268.41, 268.42 and 268.43, if for paragraph (d) of each of the offences, the conduct results in death s 268.44, if for paragraph (e) of the offence, the conduct results in death |
| 4 | Child abuse material | <i>Crimes Act 1900</i> <i>Criminal Code</i> of the Commonwealth | ss 91G, 91H, 578B* and 578C(2A)* ss 273.5*, 273.6, 273.7, 273A.1, 471.16*, 471.17*, 471.19, 471.20, 471.22, 474.19*, 474.20*, 474.22, 474.22A, 474.23 and 474.24A |
| | | <i>Customs Act 1901</i> of the Commonwealth | s 233BAB, if the tier 2 goods are constituted by items of child pornography or child abuse material |
| 5 | Bestiality | <i>Crimes Act 1900</i> | ss 79 and 80, as in force on and from 8 June 1984 ss 79 and 80, as in force before 8 June 1984, if the offence relates to bestiality |

Part 2 Child or vulnerable person victim

| Item | Type of offence | Act/Criminal Code | Offences |
|------|---|--|--|
| 1 | Acts endangering life or causing injury | <i>Crimes Act 1900</i> | ss 39, 45A, 46, 47, 49, 96 and 98 s 44, as in force before 15 February 2008, if the offence involves malicious bodily harm so that life is endangered s 45, except as in force before 2 August 1974 s 198, except as in force before 13 January 1988 |
| | | <i>Criminal Code of the Commonwealth</i> | ss 115.3, 115.4, 268.25, 268.47(2), 268.71(2), 268.73, 268.92(2), 271.6, 271.7B, 271.7C, 271.7D and 271.7E |
| 2 | Serious assault | <i>Crimes Act 1900</i> | ss 35, 35A(1), 36*, 37, 42, 60A(3), 60E(3) and 208(3)(c) s 33*, as in force before 15 February 2008, if the offence involves wounding or grievous bodily harm ss 33 and 33A(1), as in force on and from 15 February 2008 s 33A*, as in force before 15 February 2008, if the offence involves grievous bodily harm s 57, if the offence involves wounding ss 107(3)*, 109(3), 111(3), 112(3) and 113(3), if the circumstances of special aggravation under the offence involves wounding or grievous bodily harm s 110, if the offence involves grievous bodily harm |
| | | <i>Criminal Code of the Commonwealth</i> | ss 71.4, 71.5, 268.13, 268.26, 268.27, 268.28 and 274.2 |
| 3 | Sexual offences | <i>Crimes Act 1900</i> | ss 61B*, 61C*, 61D*, 61E*, 61J, 61JA, 61K, 61KD, 61KF, 61M*, 61O*, 65A*, 66*, 66A, 66B, 66DA, 66DC, 66DE, 66DF, 66EA, 66EB, 66EC, 66F, 67*, 68*, 72A*, 73, 73A, 74*, 78A, 78B, 78H*, 78I*, 78M*, 78N*, 78O*, 80A, 80D, 80E, 91A, 91B, 91D, 91E and 91F |
| | | <i>Crimes Act 1914 of the Commonwealth</i> | ss 50BA*, 50BB*, 50BC*, 50BD*, 50DA* and 50DB* |
| | | <i>Criminal Code of the Commonwealth</i> | ss 71.8, 268.14, 268.15, 268.16, 268.19, 268.59, 268.60, 268.61, 268.64, 268.82, 268.83, 268.87, 271.2, 271.4, 271.5, 272.8, 272.9, 272.10, 272.11, 272.12, 272.13, 272.14, 272.15, 272.18, 272.19, 272.20, 471.24, 471.25, 471.26, 474.25A, 474.25B, 474.25C, 474.26, 474.27 and 474.27A s 270.6*, as in force before 8 March 2013 |

| Item | Type of offence | Act/Criminal Code | Offences |
|------|--|---|---|
| 4 | Abduction, kidnapping and deprivation of liberty | <i>Criminal Code</i> of the Commonwealth | ss 73.1, 73.2, 73.3, 73.3A, 268.10, 268.21(1), 270.3, 270.5, 270.6A, 270.7B, 270.7C and 271.7 |
| 5 | People smuggling offences | <i>Migration Act 1958</i> of the Commonwealth | ss 233A, 233B, 233C and 233D |
| 6 | Other offences | <i>Crimes Act 1900</i> | ss 32C(2)* and 211(1) ss 93IF* and 93O, except in the circumstances specified in item 1 of Part 1 of this Schedule s 203*, as in force before 13 January 1988 s 483(b)*, if the offence involves the commission of an indecent act |
| | | <i>Criminal Code</i> of the Commonwealth | ss 104.3* and 104.4*, as in force before 14 December 2005 ss 268.17, 268.18, 270.7 and 271.9* |

Part 3 Child or vulnerable person victim—non-relative

| Item | Type of offence | Act/Criminal Code | Offences |
|------|--|--|---|
| 1 | Abduction, kidnapping and deprivation of liberty | <i>Crimes Act 1900</i> | ss 85A*, 86, 87, 89*, 90*, 90A* and 91* |
| | | <i>Crimes (Internationally Protected Persons) Act 1976</i> of the Commonwealth | s 8(1), if a person kidnaps an internationally protected person |
| | | <i>Criminal Code</i> of the Commonwealth | ss 71.9 and 71.10 |

Part 4 Younger child or vulnerable person victim

| Item | Type of offence | Act | Offences |
|------|-----------------|------------------------|--|
| 1 | Sexual offences | <i>Crimes Act 1900</i> | ss 61I, 61KC, 61KE, 61L*, 61N*, 66C, 66D, 66DB, 66DD, 71*, 72*, 76*, 76A*, 78K*, 78L*, 78Q*, 81*, 81A* and 81B* ss 79 and 80, as in force before 8 June 1984, if the offence relates to buggery |

Schedule 2 Presumptively disqualifying offences

Note. * indicates a repealed provision

Part 1 General

| Item | Type of offence | Act/Criminal Code | Offences |
|------|---|--|---|
| 1 | Manslaughter, unlawful death and related offences | <i>Crimes Act 1900</i> | ss 18(1)(b), 21, 22A, 23, 25A and 25C s 32A*, if the offence was committed in circumstances other than specified in item 1 of Part 1 of Schedule 1 |
| | | <i>Criminal Code of the Commonwealth</i> | s 104.2*, as in force on and from 1 October 2002 to 13 December 2005 s 115.2 |
| 2 | Offences relating to national security | <i>Crimes Act 1900</i> | ss 12, 310J and 348 |
| | | <i>Crimes Act 1914 of the Commonwealth</i> | ss 3UC, 3ZQM and 3ZQS s 24(1)*, if the offence was committed in circumstances other than specified in item 1 of Part 1 of Schedule 1 |
| | | <i>Crimes (Internationally Protected Persons) Act 1976 of the Commonwealth</i> | s 8(2)(b) |
| | | <i>Crimes (Torture) Act 1988 of the Commonwealth</i> | s 6* |
| | | <i>Criminal Code of the Commonwealth</i> | ss 71.3, 80.1, 80.1AA, 80.1AC, 80.2, 80.2A, 80.2B, 80.2C, 80.2D, 82.3, 82.4, 82.5, 82.6, 82.7, 82.8, 82.9, 83.1, 83.2, 83.3, 91.1, 91.2, 91.3, 91.6, 91.8, 91.11, 91.12, 92.2, 92.3, 92.4, 92.7, 92.8, 92.9, 92.10, 92A.1, 101.1, 101.2, 101.4, 101.5, 101.6, 102.2, 102.3, 102.4, 102.5, 102.6, 102.7, 102.8, 103.1, 103.2, 119.1, 119.4, 122.1, 122.2, 122.4, 268.11, 268.12, 268.20, 268.21(2), 268.22, 268.23, 268.29, 268.30, 268.31, 268.32, 268.33, 268.34, 268.35, 268.36, 268.37, 268.38(2), 268.39, 268.40(2), 268.45, 268.46, 268.47(1), 268.48(2), 268.49(2), 268.51, 268.52, 268.53, 268.54, 268.55, 268.56, 268.57, 268.58, 268.62, 268.63, 268.66, 268.67, 268.68, 268.72, 268.74, 268.75, 268.76(1), 268.77, 268.78, 268.79, 268.80, 268.81, 268.84, 268.85, 268.86, 268.88, 268.89, 268.90(2), 268.93(2), 268.94, 268.95, 268.96, 268.99 and 268.101 ss 268.65 and 268.98, if the offence was committed in circumstances other than specified in item 1 of Part 1 of Schedule 1 |
| 3 | Drug offences | <i>Drug Misuse and Trafficking Act 1985</i> | ss 23(2), 23A, 24(1A), (2) and (2A), 25(1A), (2), (2A), (2C) and (2D), 36Y(2) and 36Z(2) |

| Item | Type of offence | Act/Criminal Code | Offences |
|------|------------------------|--|--|
| | | | ss 23(1)(a), (b) and (c), 24(1) and 25(1), as in force before 21 August 1988 |
| | | <i>Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990</i> of the Commonwealth | ss 10–13, if the offence involves engaging in conduct that is a dealing in drugs referred to in s 6(1)(e) of that Act and a commercial quantity of the drug or substance was sold, supplied or possessed |
| | | <i>Criminal Code</i> of the Commonwealth | ss 302.2, 302.3, 304.1, 304.2, 305.3, 307.1, 309.2, 309.3, 309.4, 309.7, 309.8, 309.10, 309.11, 309.12, 309.13, 309.14 and 309.15 |
| | | <i>Customs Act 1901</i> of the Commonwealth | ss 231*, 233A* and 233B*, if the offence involves a commercial quantity of a narcotic substance |
| 4 | Serious violence | <i>Crimes Act 1900</i> | s 60(3) and (3A) |
| 5 | Serious animal cruelty | <i>Crimes Act 1900</i> | ss 483(g)* and 530 |
| | | | s 531, if the offence involves seriously injuring an animal |
| | | <i>Prevention of Cruelty to Animals Act 1979</i> | s 6 |

Part 2 Child or vulnerable person victim

| Item | Type of offence | Act/Criminal Code | Offences |
|------|---------------------|--|---|
| 1 | Fraud and deception | <i>Crimes Act 1900</i> | ss 93ID*, 93M, 103*, 124, 134, 154A, 156, 157, 158*, 159, 160, 162, 165*, 166*, 168*, 169*, 170*, 172*, 176A*, 178A*, 178B*, 178BA*, 178BB*, 178C*, 179*, 184*, 184A*, 185*, 185A*, 186*, 192E, 192F, 192G, 192J, 192K, 249C, 253, 254, 255, 256, 257*, 258*, 298*, 300*, 301*, 302*, 309*, 337 and 547A* |
| | | <i>Crimes Act 1914</i> of the Commonwealth | s 85Y* |
| | | <i>Criminal Code</i> of the Commonwealth | ss 144.1, 145.1, 145.2, 145.5, and 372.1 |
| 2 | Sexual offences | <i>Crimes Act 1900</i> | ss 91J, 91K, 91L, 91M, 91P, 91Q, 91R, 91S and 547C |
| | | <i>Summary Offences Act 1988</i> | ss 5, 21G* and 21H* |
| | | <i>Criminal Code</i> of the Commonwealth | s 474.17A |

Part 3 Child or vulnerable person under care

| Item | Type of offence | Act/Criminal Code | Offences |
|------|----------------------------------|--|----------|
| 1 | Child abuse and related offences | <i>Children (Care and Protection) Act 1987</i> | s 25* |
| | | <i>Crimes Act 1900</i> | s 316A |

| Item | Type of offence | Act/Criminal Code | Offences |
|-------------|------------------------|--|---|
| 2 | Neglect | <i>Children and Young Persons (Care and Protection) Act 1998</i> <i>Children (Care and Protection) Act 1987</i> <i>Crimes Act 1900</i> | ss 228 and 231 ss 26*, 29* and 52* ss 43, 43A and 43B s 44, if the offence was committed in circumstances other than specified in item 1 of Part 2 of Schedule 1 s 45, as in force before 2 August 1974 |

Schedule 3 Penalty notice offences

1 Application of Schedule

- (1) For the purposes of section 57 of the Act—
- (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
 - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
- (a) that limited kind of offence, or
 - (b) an offence committed in those limited circumstances.

| Column 1 | Column 2 | Column 3 |
|-------------------------------|----------------------------------|----------------------------------|
| Provision | Penalty for an individual | Penalty for a corporation |
| Offences under the Act | | |
| Section 18(1) | \$110 | — |
| Section 30(6) | \$110 | \$2,200 |