

National Disability Insurance Scheme (Worker Checks) Regulation 2020

[2020-258]



New South Wales

Status Information

Currency of version

Current version for 13 August 2021 to date (accessed 26 July 2024 at 18:08)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[National Disability Insurance Scheme \(Worker Checks\) Amendment \(Fee Increase\) Regulation 2024 \(304\)](#) (not commenced — to commence on 1.8.2024)
- **Staged repeal status**
This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2025

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 19 July 2024

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New South Wales

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National Disability Insurance Scheme (Worker Checks) Regulation 2020



New South Wales

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) (Repealed)
- (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,
- (e) *Disability Services Act 2006* of Queensland,
- (f) *National Disability Insurance Scheme (Worker Screening) Act 2020* of Western Australia,
- (g) *Worker Screening Act 2020* of Victoria.

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
			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
		<i>Crimes Act 1900</i>	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)*
1	Murder and related offences	<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 ss 268.41, 268.42 and 268.43, if for paragraph (d) of each of the offences, the conduct results in death
3	Acts intended to cause injury or death	<i>Criminal Code</i> of the Commonwealth	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 <i>Customs Act 1901</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 s 233BAB, if the tier 2 goods are constituted by items of child pornography or child abuse material ss 79 and 80, as in force on and from 8 June 1984
5	Bestiality	<i>Crimes Act 1900</i>	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</i> of the Commonwealth	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
			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
		<i>Crimes Act 1900</i>	s 33A*, as in force before 15 February 2008, if the offence involves grievous bodily harm
2	Serious assault		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</i> of the Commonwealth	ss 71.4, 71.5, 268.13, 268.26, 268.27, 268.28 and 274.2
			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
3	Sexual offences	<i>Crimes Act 1900</i>	
		<i>Crimes Act 1914</i> of the Commonwealth	ss 50BA*, 50BB*, 50BC*, 50BD*, 50DA* and 50DB*

			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
		<i>Criminal Code</i> of the Commonwealth	s 270.6*, as in force before 8 March 2013
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
			ss 32C(2)* and 211(1)
			ss 93IF* and 93O, except in the circumstances specified in item 1 of Part 1 of this Schedule
		<i>Crimes Act 1900</i>	s 203*, as in force before 13 January 1988
6	Other offences		s 483(b)*, if the offence involves the commission of an indecent act
			ss 104.3* and 104.4*, as in force before 14 December 2005
		<i>Criminal Code</i> of the Commonwealth	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> <i>Crimes (Internationally Protected Persons) Act 1976</i> of the Commonwealth	ss 85A*, 86, 87, 89*, 90*, 90A* and 91* s 8(1), if a person kidnaps an internationally protected person

Criminal Code 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> <i>Criminal Code</i> of the Commonwealth	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 s 104.2*, as in force on and from 1 October 2002 to 13 December 2005

		s 115.2
	<i>Crimes Act 1900</i>	ss 12, 310J and 348
		ss 3UC, 3ZQM and 3ZQS
	<i>Crimes Act 1914</i> of the Commonwealth	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</i> of the Commonwealth	s 8(2)(b)
	<i>Crimes (Torture) Act 1988</i> of the Commonwealth	s 6*
2	Offences relating to national security	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
	<i>Criminal Code</i> of the Commonwealth	

			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
		<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)
			ss 23(1)(a), (b) and (c), 24(1) and 25(1), as in force before 21 August 1988
3	Drug offences	<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)
		<i>Crimes Act 1900</i>	ss 483(g)* and 530
5	Serious animal cruelty	<i>Prevention of Cruelty to Animals Act 1979</i>	s 531, if the offence involves seriously injuring an animal
			s 6

Part 2 Child or vulnerable person victim

Item	Type of offence	Act/Criminal Code	Offences
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			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*
1	Fraud and deception	<i>Crimes Act 1900</i>	
		<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
		<i>Crimes Act 1900</i>	ss 91J, 91K, 91L, 91M, 91P, 91Q, 91R, 91S and 547C
2	Sexual offences	<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
		<i>Children and Young Persons (Care and Protection) Act 1998</i>	ss 228 and 231
		<i>Children (Care and Protection) Act 1987</i>	ss 26*, 29* and 52*
2	Neglect		ss 43, 43A and 43B
		<i>Crimes Act 1900</i>	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